

CHAPTER ONE

INTRODUCTION

1.1 Chapter outline

This chapter gives an outline of how the investigation of illegal farm evictions in the Great Kei Local Municipality is undertaken in this study. To fulfil the intended goal, the descriptive-analytical method is used because it explains concepts and variables and clears grey areas.

The chapter discusses the background to the problem; the statement of the problem; the purpose of the study; specific objectives or research questions; hypotheses or assumptions of the study; the significance of the study; justification or the rationale of the study; the delimitation of the study; definition of terms; literature review; the methodology; ethical considerations; limitations of the study; a chapter breakdown; and a summary.

1.2 The background to the problem

At different times in South Africa, a number of calls have been made to end the illegal eviction of people living and working on farms. Such calls saw the adoption of the Extension of Security of Tenure Act, 62 of 1997 (ESTA). One of the primary aims of ESTA is to protect people living and working on farms against illegal evictions. However, despite its existence, people living and working on farms continue to be victims of such evictions.

The aim of this study is to investigate the manner in which calls made during the 2001 Tenure Conference against illegal farm evictions have been heeded in the Great Kei Local Municipality of the Eastern Cape. That investigation will go as far as a year after the 2005 Land Summit.

In his remarks about the 2001 Tenure Conference on the limits of the Land Reform (Labour Tenants) Act 3 of 1996 (LTA) and the ESTA, Roth (Roth et al. 2004: 401) state that many landless and farm workers want legislation that more vigorously and effectively secures rights to land and residence, and protects them from eviction. Despite the promulgation of the LTA/ESTA legislation, there are increasing cases observed of unlawful and arbitrary evictions without any compensation or redress.

Mention may also be made that interest in the study was also provoked by the survey conducted by Social Surveys and the Nkunzi Development Association which refers to, "... the continuation, even increase, in the number of evictions taking place (sic) post apartheid", (SKFNES: 7). It reveals that

942, 303 people were evicted from farms in South Africa between 1994 and 2004.

Among others, ESTA is meant " ... to regulate conditions and circumstances under which persons, whose right of residence has been terminated, may be evicted from land". In other words, it is assumed an eviction can happen (Preamble to the Extension of Security of Tenure Act, 62 of 1997).

ESTA also states that those who do not have secure tenure are vulnerable to unfair evictions. It concedes that unfair evictions lead to great hardship, conflict and social instability. It also attributes the situation partly to the past discriminatory laws and practices (Preamble to the Extension of Security of Tenure Act, 62 of 1997).

Above everything else, the South African Constitution states that, "No one may be evicted from their home, or have their home demolished, without an order of court made after considering all relevant circumstances.

No legislation may permit arbitrary evictions" (Section 26 (3) of the Constitution of the Republic of South Africa, Act 108 of 1996).

1.3 Statement of the problem

Illegal farm evictions continue unabated despite ESTA and calls to curb such evictions.

1.4 Purpose of the study

The purpose of this study is to investigate illegal farm evictions in the Great Kei Local Municipality of the Eastern Cape. Illegal farm evictions in the area continue endlessly to affect the lives of people living and working on farms even though there is legislation, ESTA, to curb such illegal practice. Calls against evictions have been made a number of times but it would seem the calls fell on deaf ears. The 2001 Tenure Conference and the 2005 Land Summit are examples of events wherein such calls have been made.

To fulfil the purpose of the study, the qualitative research paradigm will be used to make the investigation. The case study method is the preferred option.

The study will look, among others, at the:

- vulnerability of people living and working on farms;
- attitudes of farm owners;
- attitudes of the police;
- attitudes of prosecutors; and
- attitudes of the courts.

1.5 Specific objectives or research questions

1. Are the rights and obligations under ESTA clearly understood by farmers and evictees?
2. Do law enforcement agencies (including the courts) understand their roles in terms of administering ESTA?

1.6 Hypotheses or assumptions of the study

- Illiteracy of people living and working on farms contributes to their inability to know their rights under ESTA.
- People living and working on farms are subservient to farm owners at the expense of their land rights because they have no other places of abode and employment, except on the farms.
- Police and magistrates collaborate with farm owners when the rights of people living and working on the farms are violated.

1.7 Significance of the study

The study is more than just an academic exercise that will be confined to the bookshelves of a tertiary institution. Because it involves the lives of humans, it is hoped that appropriate authorities will take heed of the outcomes of the study. Furthermore, those having their rights violated are voters that are a constituency to political parties.

Surely, people living and working on farms will benefit from the study because it is looking at their plight with the intent to rectify an existing and continuing wrong. In a certain way, it will change the attitudes of farm owners, the police, the prosecutors and our courts, thus benefiting people living and working on farms.

1.8 Justification / Rationale of the study

ESTA, among others, is meant to protect people living and working on farms against illegal evictions. But in real life, this has not happened. ESTA is the first to admit that such evictions lead to great hardship, conflict and social instability (Preamble to the Extension of Security of Tenure Act, 62 of 1997).

Illegal farm evictions are a violation of the rights of people living and working on farms. It seems befitting therefore to cite here the South African Constitution, which, under the Bill of Rights, states: “No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions” (Section 26 (3) of the Constitution of the Republic of South Africa, Act 108 of 1996).

Illegal farm evictions, therefore, deprive people living and working on farms of their human rights in particular, the right to human dignity. Society tends to look down or disrespect people who live on the side of the road or are homeless.

1.9 Delimitation of the study

The study will concentrate on the community of people living and working on commercial farms in the Great Kei Local Municipality of the Eastern Cape. Within the Department of Land Affairs (DLA) in the Eastern Cape, the Great Kei Local Municipality is referred to as the “hot spot” as far as illegal farm evictions are concerned. To give light to this assertion, between February and April 2006 out of the 12 eviction cases reported to the Amathole District Level Delivery Office (ADLDO) of the DLA from eight municipalities, six cases were from the Great Kei Local Municipality. In terms of land reform issues, the Great Kei Local Municipality falls under the jurisdiction of the ADLDO.

Mention may also be made that out of the total of 54 people affected by these evictions, 33 were from the Great Kei Local Municipality. The Great Kei Local Municipality is predominantly a farming community, with little or no industrial concerns. Therefore, farming is the major employment provider in the area, and people owning farms are predominantly whites. There are a few “dots” of emerging (Black) farmers scattered in the area. But their attitude towards evicting people living and working on farms is not different from their white counterparts.

Sifting through a pile of documents at the Deeds Office in King William’s Town, the researcher discovered that on the 18 December 2006 out of 918 farming properties in the Great Kei Local Municipality, 65 were registered in the names of black people. The information also revealed that 371 farming properties were registered in white individual’s names; 325 were registered in white owned trusts and companies (18 of those bore African names); 47 were state properties; 26 were owned by parastatal institutions; and 148 had no names.

On the other hand, people living and working on farms in the Great Kei Local Municipality are predominantly black and landless. They rely for their livelihood on employment provided to them by the farmers. Their wages can never be described as reasonable. Most of them have never been to school. Their plight has made them subservient to the farmers.

The study will be confined to the period between December 2001 and December 2006, that is, after the 2001 Tenure Conference and after the 2005 Land Summit. The period is chosen because at both the Conference and the Summit, calls were made for the cessation of all illegal farm evictions in farming communities throughout South Africa. The period is deemed to be a fair and a reasonable time to observe whether the calls were heeded or not.

Furthermore, within the Department of Land Affairs there are practical strides being made to consolidate ESTA with the Land Reform (Labour Tenants) Act 3 of 1996 (LTA). This suggests that it is probable that before long, ESTA may not necessarily be what it is today, and its objectives could in future be different from what the current ones are.

1.10 Definition of terms

Occupier

ESTA defines an occupier as “... a person residing on land which belongs to another person, and who has or on 4 February 1997 or thereafter had consent or another right in law to do so...” (Section 1 of the Extension of Security of Tenure Act, 62 of 1997).

Dweller

Bosman in Roth et al. (2004: 286) contends that the term “farm dweller” is a very broad one that potentially includes the owner, his family and all persons who reside on the farm, irrespective of whether such a person has the consent to do so or not.

Farm workers

The literal meaning of the term will be accepted in this study, that is, farm workers are people working on farms.

People or communities

Lately, the Department of Land Affairs prefers, rather than using occupier or dweller, people or communities living and working on commercial farms (RNLS: 23).

In many an instance the three terms, that is occupier, dweller and farm worker, even though sometimes confusing, are used interchangeably. For the purposes of this study, people or communities living and working on farms will be used. It is more specific than the occupier, the dweller or the farm worker.

Evict

To evict means to deprive a person against his or her will of residence on land or the use of land or access to water which is linked to a right of residence in terms of ESTA. Eviction has a corresponding meaning in terms of ESTA (Section 1 of the Extension of Security of Tenure Act, 62 of 1997).

1.11 Literature review

It would seem there are a number of academics and researchers that have ventured into looking at evictions in general, including those happening on farms in South Africa. In this review not all the literature that will be used for this study is discussed. A limited number is elaborated on to indicate that there is a wealth of information and research findings that are available on illegal evictions of people living and working on farms. Documents on evictions and human rights will form part of this review.

1.11.1 Universal Declaration of Human Rights (UDHR)

The first document to be observed here is the Universal Declaration of Human Rights (UDHR). Article 25(1) of the latter seems to be the most relevant for this study. It states that: "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control".

1.11.2 International Covenant on Economic, Social, and Cultural Rights (CESCR)

Article 11 (1) of the CESCR states: “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent”.

General Comment No. 4 (1991) on the implementation of this Article observed that “...all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats”. It concluded that “... forced evictions are prima facie incompatible with the requirements of the Covenant”. Because of the manner in which the foregoing Comment paraphrases Article 11 (1) of CESCR, a clear guideline is provided against illegal farm evictions.

1.11.3 The South African Constitution

In a certain way the South African Constitution echoes the same spirit as the UDHR and the CESCR when it states: “No one may be evicted from their home, or have their home demolished, without an order of court made after considering all relevant circumstances. No legislation may permit arbitrary evictions” (Section 26 (3) of the Constitution of the Republic of South Africa, of 1996).

1.11.4 ESTA

ESTA could be described as the guiding document regarding both legal and illegal evictions on farms in South Africa. Further, ESTA states that it is meant to:

provide for measures with State assistance to facilitate long-term security of land tenure; regulate the conditions of residence on certain land; regulate the conditions on and circumstances under which the right of persons to reside on land may be terminated; and regulate the conditions and circumstances under which persons, whose right of residence has been terminated, may be evicted from land; and provide for matters connected therewith.

ESTA encompasses the spirit of human rights in its fold, as it echoes what the Bill of Rights contained in the South African Constitution (Sections 10, 12, 14, 15, 16, 18 and 21 of the Republic of South Africa Constitution Act of 1996). ESTA provides that, "... an occupier, an owner, and a person in charge shall have the right to ... human dignity; freedom and security of the person; privacy; freedom of religion, belief and opinion and of expression; freedom of association; and freedom of movement" (Section 5 of the Extension of Security of Tenure Act, 62 of 1997).

1.11.5 Roth et al. (2004)

The book contains papers delivered at the 2001 Tenure Conference, which have a wide range of topics around tenure reform. Some of the papers discuss ways and means of protecting people living and working on farms and challenges that are encountered in the process. Others concentrate on creating long-term tenure security for farm dwellers. There is also a debate about who the real farm dweller is considering that the farm owner also lives on the farm.

Mangaliso Kubheka of the Landless People's Movement (LPM) was one of the speakers at the Conference that bluntly called for a moratorium on evictions.

The LPM draws its membership from people living and working on farms (Roth et al. 2004: 299).

1.11.6 The Summary of Key Findings from the National Evictions Survey (SKFNES)

The document reflects quantifiably the pattern of evictions in South Africa between 1960 and 1983; 1984 and 1993; and 1994 and 2004, (SKFNES: 4 and 7). The findings contain reasons for the evictions, court ordered evictions, and the impact of the evictions. Furthermore, the findings identify the victims of evictions as Black South Africans. During the periods mentioned above, 49 % of the evictees were children, thus raising questions about the protection of children's rights. The findings add that women are more vulnerable to eviction (SKFNES: 10).

1.11.7 The Report of the National Land Summit (RNLS)

The document contains, among others, a resolution of the summit that calls for a moratorium on all evictions until new legislation is approved and programmes are in place to properly defend people living and working on commercial farms. In the same vein, Agriculture South Africa (AgriSA) felt that legal evictions should not be stopped.

Another important factor adopted by the Summit was the development of a coherent and proactive strategy by the government to secure the rights of people living and working on commercial farms. This would be complimented by assisting them to have land of their own. This, the government would be doing in partnership with civil society (RNLS: 23).

1.11.8 Rembe (2001)

In her research, under the provision of land, Rembe (2001) discusses the implementation of ESTA, reasons for evictions, the manner in which evictions take place, documentation used in evictions and measures taken to address problems of illegal evictions. This is an illuminating discussion on the study.

Rembe (2001: 53) argues that illegal evictions remain a problem despite the implementation of ESTA. She points out that too much of the implementation of ESTA is vested in courts and in some cases it has not been objective. This, she states, has resulted in the Land Claims Court reversing some of the decisions of the lower courts.

1.11.9 Luck and Vena (2003)

In their paper Luck and Vena (2003) discuss, among others, economic concerns of farm workers, security concerns of farmers, and existing legal protection for farm workers which includes attempts at tacit eviction (constructive eviction). The latter topic is a case study, which is relevant to this study.

What is also interesting in their discussion on the effect that the transition to game farming will have on farm workers who still reside on the affected land. In most instances, the farm workers become victims of eviction when ordinary farming is converted to game farming (Luck and Vena 2003: 85).

1.11.10 Lahiff (2003)

In this research paper Lahiff (2003) argues that on commercial farms, ESTA has had little success in preventing illegal evictions. He contends that while ESTA makes it more difficult to evict occupiers of farm housing, evictions are still possible, and illegal evictions remain common.

In a critical sense, Lahiff (2003: 42) explains that ESTA allows farm dwellers to apply for grants on-farm or off-farm developments, and the Act also empowers the Minister of Land Affairs to expropriate land for such developments. He concedes that grants have been provided, but for people moving off farms rather than those living on farms to provide them with agricultural land of their own, or secure accommodation where they work. This could be interpreted as encouraging people to move off farming communities.

1.11.11 Hall (2003)

In her paper, Hall (2003) undertakes a broad but an indepth discussion of ESTA. She elaborates on the provisions of ESTA; its achievements and impact; legal evictions under ESTA; monitoring and evictions; illegal evictions; awareness of rights; and the justice system. The paper also makes an evaluation of ESTA.

In her evaluation ESTA is described as a balanced piece of legislation that imposes obligations on farm dwellers and owners, as well as creating rights. However, she is surprised that it "... is to be applied to such a strikingly *unequal* set of social and economic relations – without the power to transform them".

1.11.12 Hall (2004)

Hall (2004) dedicates a whole chapter in her report on tenure reform. The discussion on farm evictions includes monitoring eviction orders, provincial ESTA forums and resolving disputes.

On eviction orders, she explains that statistics of the Land Claims Court indicate that there has been a rise in the total number of eviction orders on review each year until 2003 when they reached a peak of 121. She adds that among the eviction orders being reviewed, fewer are being set aside (Hall 2004: 40).

1.11.13 Wegerif et al. (2005)

The following chapters in Wegerif et al. (2005) are relevant for this study:

1.11.13.1 The scale of evictions

Under this heading Wegerif et al. (2005: 41) reveal that from 1984 to 2004 almost 1.7 million people were evicted from farms. The authors argue that the scale and uninterrupted nature of these evictions reveal the startling weakness in the legislation passed since 1994 to protect the rights of farm dwellers. They also claim that the lack of awareness amongst farm dwellers of their rights has resulted in the majority of farm evictions going on unchallenged.

1.11.13.2 Perspectives from commercial farmers

Herein the views of commercial farmers are heard. The reasoning behind listening to those views is to get perspectives of landowners as to why evictions occur. Those expressing their views were in leadership positions of AgriSA, Transvaal Agricultural Union (TAU), and the National African Farmer's Union (NAFU); (Wegerif et al. 2005: 78).

1.11.13.3 The Impact of evictions on livelihoods of farm dwellers

Wegerif et al. (2005: 91) in this chapter explore in greater detail the institutional, physical and socio-economic impact of evictions on the lives of people who have forged a way of life on farms, often the only way of life they know, but which, as a result of being evicted, they are forced to abandon. The livelihoods framework is used as the basis for evaluating the impact of evictions on the livelihoods of evicted households.

1.11.13.4 Aspirations of evictees

In this chapter, primarily Wegerif et al. (2005: 181) reveal that farm dwellers want to have secure jobs or jobs better than their current or previous ones. In the same spirit, the evictees unambiguously highlight their desire to be farmers on land belonging to them.

1.12 Fact Sheet No 25

This Fact Sheet talks about forced evictions in general, which are appropriately linked to violation of human rights. In this respect it facilitates an understanding of the link between illegal farm evictions in the Great Kei Local Municipality of the Eastern Cape and violation of human rights. The following are among the topics discussed in this document: human rights and forced evictions; national legislative and policy responses to forced eviction; responses by civil society to forced evictions; and remedies against forced evictions.

It also replicates the same sentiments expressed by the UDHR, the CESC and General Comment No 4 of 1991 of the Committee on Economic, Social and Cultural Rights. It has an emphasis on states being the perpetrators of evictions in general. Unfortunately, for this study, illegal farm evictions are not made by the state. They result from the activities of farm owners.

1.13 Nkunzi Conference Report

The following are recommendations of the report:

1.13.1 Economics of farms

The report recommends that farm dwellers who get land should be taught how to use the land; how to market their products; where to market them and how to negotiate with buyers; modern farming technology; and how to handle and invest money (2005: 10).

1.13.2 Legal and policy issues

One recommendation that is made here is that there must be one farm dweller tenure law and not a general eviction law. The law must stop rather than facilitate evictions (2005: 11). Similarly, there should be a holistic policy that must provide for both long-term and short-term solutions. The recommendation stipulates that the policy must include a new strategy for implementation, a communication strategy, and a monitoring and evaluation system (2005: 11).

1.13.3 Women and children

This recommendation suggests that the Departments of Land Affairs and Labour must develop specific policies and legal frameworks that recognise issues specific to women and children on farms (2005: 13).

1.13.4 Creating sustainable settlements

This recommendation encourages an integrated rural planning framework which covers appropriate settlement options, service delivery, rural development, agrarian reform and non-agricultural economic opportunities. The planning must involve people on farms (2005: 14).

1.14 Point of departure

This study does not necessarily differ from other studies that are available in existing literature. Literature reviewed is used as a guide to an intensive study. Rembe's (2001) and Luck and Vena's (2003) studies are examples that tackle a variety of illegal farm evictions. However, their approach is broad and general. This study entails an in-depth discussion of one specific type of eviction, constructive eviction, and is reflective of its traumatic consequences to its victims.

1.15 Methodology

The case study method will be preferred in this study. One of the reasons for choosing it is because in it one can use one unique case. It may be an organisation or a community. In this particular study it is people living and working on commercial farms in the Great Kei Local Municipality. The case study method will enable the researcher to systematically gather enough information about a particular group, which is people living and working on commercial farms at the Great Kei Local Municipality. This will permit the researcher to effectively understand how the pain of being evicted unceremoniously affects people living and working on commercial farms.

While interacting with people living and working on farms in the context of the research, the researcher will be able to have a sense of whether they are aware of their rights and obligations or not. The researcher will also be in a position to understand whether the interviewees are afraid of their employer or not.

Above everything else, the researcher will know whether the calls for a moratorium on illegal farm evictions made at the 2001 Tenure Conference were heeded in the Great Kei Local Municipality.

1.16 Ethical considerations

When doing a research involving human beings, an investigator is compelled to consider that humans have moral and legal rights that have to be respected. The researcher therefore has to distinguish between what is right and what is wrong (Wimmer and Domminick 1983:349). The researcher will be compelled to bear in mind the following principles advocated by Wimmer and Domminick (1983) and Babbie (1992):

First, voluntary participation, that is, participants must not be coerced to take part in the research.

Secondly, no harm – participating or non-participating must not bring harm to interviewees.

Thirdly, anonymity – their identity must not be revealed.

Fourthly, confidentiality – whatever is relayed to the researcher as confidential, it must remain as such.

Fifthly, deceiving subjects – once this happens, trust between the researcher and the interviewee is broken forever.

Sixthly, analysis and reporting – the researcher has to be objective when doing his/her analysis and avoid at all costs being biased in favour of his/her sponsors.

Lastly, the researcher has a duty to report back about the research findings and the recommendations that he/she is making.

1.17 Limitations of the study

The major concern, which could limit the study, is the refusal by farm owners of permission to the researcher to enter their farms. Even when such a permission is granted, people living and working on farms may be scared of their employers and become unco-operative. It is an open secret that some people living and working on commercial farms are subservient to their employers and because of this, their views could be swayed towards the employer's interests and not be reflective of the real situation prevailing on the farm.

1.18 Chapter breakdown

The dissertation will be presented in five chapters. Chapter One will be largely based on the research proposal. Among others, it will provide a background, the purpose of the study, specific objectives or research questions, hypotheses or assumptions of the study, the significance of the study, justification or rationale of the study, delimitation of the study, literature review, methodology, ethical considerations, and the limitations of the study.

Chapter Two will trace evictions in South Africa during the colonial and the apartheid eras; while Chapter Three will examine the institutions and documents that influence the human rights culture in South Africa. The latter will focus on the legislative framework on human rights. The inculcation of the spirit of the human rights culture in South Africa will be part of this chapter.

Chapter Four will critically evaluate farm evictions in the Great Kei Local Municipality between December 2001 and December 2006. A case study of the same municipality will be the nucleus of this research. Statistics will be used to authenticate the arguments of the evaluation. This will be followed by a conclusion that will entail the findings, evaluation and recommendations of the study.

1.19 Summary

This chapter concentrates on identifying whether there is a need to undertake an investigation of illegal farm evictions in the Great Kei Local Municipality of the Eastern Cape. It comes out with information that confirms that illegal farm evictions continue to happen despite the spirit of the South African constitution that outlaws such evictions. Added to that is ESTA, that is meant to prevent illegal farm evictions.

Calls have been made at different times for these evictions to stop. Examples of such calls that this chapter alludes to are those made during the 2001 Tenure Conference in Durban and the 2005 Land Summit in Johannesburg. Implications of the continuation of these evictions seem to suggest that the calls have fallen on deaf ears.

Questions arise whether both landowners and evictees understand their rights and obligations under ESTA. Such questions also fall on our law enforcement agencies (including the courts) about their roles as stipulated by ESTA.

Lastly, mention is made that when the study is done, the case study method will be appropriate to pursue the objectives of the research.

CHAPTER TWO

THE HISTORY OF FARM EVICTIONS IN SOUTH AFRICA

2.1 Introduction

This chapter reflects on the history of farm evictions in South Africa through both the colonial and the apartheid eras. In the discussion, cognisance of the Glen Grey Act, the Natives Land Act, the Native Administration Act, the Native Trust and Land Act and the Group Areas Act is taken into consideration. The roles played by the governments of the times and farmers in farm evictions will come into the fore in the discussion. The consolidation of bantustans and what was then called “black spot” removals will also form part of the discussion. The chapter will end by a concluding statement.

2.2 The colonial era

The arrival of Dutch, and later British, colonialists at the Cape in the mid-seventeenth century unleashed a process of systematic dispossession of indigenous people and destruction of African societies that continued up to the dawn of the democratic era. Jan van Riebeeck from the Dutch East India Company in Holland is widely and generally accepted as the first settler colonialist that set his foot on the South African soil when he arrived at the Cape on the 16 April in 1652 (Thompson in Lahiff 2006: 4).

As the European settlement at the Cape grew, traders, hunters and farmers gradually advanced inland, greatly disrupting the lives of the Khoisan and later amaXhosa and other people with whom they came into contact. Among some of the reasons that saw the colonialists expanding the occupation of South Africa was when the Dutch were defeated by the British they preferred to trek inland rather than being under the rule of the British; hence the Great Trek in 1836 (Thompson in Lahiff 2006: 4).

As the settlement expanded, settlers began to enforce military and political control over the people they encountered and the land they occupied. Sometimes they encountered resistance from the tribes they came across. This led to Seven Frontier Wars against amaXhosa in the Eastern Cape around towns like King William's Town, Keiskammahoek and Grahamstown. Dispossessed of most of their land, black people were drawn into a variety of subservient positions on farms and in towns, and later in mines and factories (Lahiff 2006: 4).

2.2.1 The Glen Grey Act

In 1894 the Glen Grey Act, regarded as the great contribution by Cecil John Rhodes to employers' efforts of that time, became law. Then the Cape had many squatters and the Act was not confined only to their question, but sought more ambitiously to create workers out of large numbers of Africans on "tribal" as well as on "white" lands. This was the beginning of the separation of people living in South Africa in terms of race and tribe (Bundy 1979: 135).

In unpacking the contents of the Act, Bundy (1979: 135) explains that among others, the Act sought to perpetuate a "producing class" in African areas; it sought to keep the reserves self-supporting; they would continue to feed the black population and thus free the capitalist sector from that responsibility. But the question arises as to how big were the areas and how productive were they? A suspicion would then arise as to their viability in self-supporting the reserves.

Bundy (1979: 135) also states that at the same time the treasured practice of private property was qualified because the nature and capacity of the members of the producing class were held to certain acceptable bounds. The proposed size of agricultural holdings, 4.2827 hectares, as well as the principle of "one man one lot" seemed designed to prevent the emergence of black farmers so successful that they might compete with white farmers. This would appear as a restriction of property ownership by Africans.

The South African History Website (SAHW) (no date: 1) describes the Glen Grey Act, 1894 as the forerunner to the Natives Land Act, 27 of 1913, and it was meant to do away with communal land rights. By introducing limited individual tenure it was hoped that Africans could be forced to become less independent in relation to their participation in the colonial cash economy. The result was that thousands of poorer African peasants were forced off the land. This view differs significantly with the one expressed by Bundy above. The SAHW view seems to imply that people were indirectly evicted from their land.

Wilson and Dominique (1973: 91) confirm that the Glen Grey Act was really a pathfinder in the eviction of African people in South Africa from their land. They outline the sale of land in Queenstown and Dodrecht in the Eastern Cape from a 1886 publication. The land sold, "... as the Glen Grey Lands, from which Natives had been lately driven out".

People, who owned that land, were the abaThembu tribe and the land had been theirs for thirty-four years. Sir George Cathcart, a governor of the Cape, granted them the land in 1852. There was no valid reason for their eviction except that there was overcrowding and many squatters, who probably had most to do with the alleged stock stealing. There was further no legal basis to justify their removal from their land. Rather they were threatened with forceful removal, and indeed the true nature of that removal was forceful in the first instance (Wilson and Dominique 1973: 91–2).

2.2.2 The Natives Land Act, 27 of 1913

On May 31, 1910, a new country in Africa came into existence, that is the Union of South Africa, consisting of two former British colonies; the Cape Colony, Natal, and "two former Boer Republics", the Transvaal and the Orange Free State. A National Convention was held in 1908 and 1909, with participation limited to white South Africans only, (21 percent of the total population). This led to the writing of a new constitution which the British Parliament then passed as the South Africa Act of 1909. The new country was part of the British empire and thus accepted the authority of the British crown

over certain of its affairs. Whites dominated the government and controlled political and economic decision-making power. The overwhelming majority of the population, mainly the indigenous Africans, had virtually no voice in government (Feinberg 1993: 70).

But there were Africans who believed that the objectives of the Natives Land Act, 27 of 1913 (Land Act) could be implemented equitably among all the races in South Africa, including the whites. Thus, Willan (1984: 159–160) contends that few Africans at the time objected strongly to the principle of territorial segregation *per se*, provided it could be implemented in a reasonable and an equitable manner, and provided it did not also entail acceptance of giving up any political or constitutional rights. But, he also admits that at the same time, few had any illusions about the possibility of either condition being met. He later concedes that these views seemed to be fully vindicated with the publication of the Native's Land Bill, for it was clear from this that there was in practice no possibility whatever of territorial separation being implemented in anything like an equitable manner (Willan 1984: 159–160).

Before engaging in any further discussion of the Land Act, it is crucial that mention of the contents of the Act be made. Section 1 of the Act state that from and after the commencement of the Act, land outside the scheduled areas would, until Parliament, acting upon the report of the commission appointed under the Act, would have made other provision, be subjected to the following provisions, that is to say: --

- a. a native shall not enter into any agreement or transaction for the purchase, hire, or other acquisition from a person other than a native, of any such land or of any right thereto, interest therein, or servitude thereover: and
- b. a person other than a native shall not enter into any agreement or transaction for the purchase, hire, or other acquisition from a native of any such land or any right thereto, interest therein, or servitude thereover

(Plaatje (no date): 2 of chapter 3).

In other words, African people in South Africa could only buy or sell or lease land to their fellow Africans. Land registered in white South Africans could not be sold by White South Africans to African South Africans. The story is also true to African South Africans in selling land to White South Africans.

The Petition from the South African Native National Congress, 1914 (PSANNC: 1-2) points out that according to this Sub-Section, Europeans (Whites) were restricted as well as Natives. But this was a restriction on paper only, because the Natives had no land to sell; besides, no European would think of settling in the scheduled native areas without infrastructure, already crowded, except for trading purposes. Consequently, the provisions of the Act really operated only against the Natives.

From its side Section 2 of the Act states that:

“From and after the commencement of this Act, no person other than a native shall purchase, hire or in any manner whatever acquire any land in a scheduled native area or enter into any agreement or transaction for the purchase, hire or other acquisition, direct or indirect, of any such land or of any right thereto or interest therein or servitude thereover, except with the approval of the Governor-General” (Plaatje (no date): 2 of chapter 3).

This means White, Indian, or Chinese South Africans could not buy land in areas designated as reserves or meant for the settlement of African South Africans.

Anyone defying the contents of both Sections 1 and 2 would be committing an offence. Section 5 (2) stipulates that:

“In the event of such an offence being committed by a company, corporation, or other body of persons (not being a firm or partnership), every director, secretary, or manager of such company, corporation, or body who is within the Union shall be liable to prosecution and punishment and, in the event of any such offence being committed by a firm or partnership, every member of the firm or partnership who is

within the Union shall be liable to prosecution and punishment" (Plaatje (no date): 5 of chapter 3).

Section 6 has the following provisions that could be construed as indicators of evicting African people from farms under this Act:

- (a) nothing in any such law or in this Act shall be construed as restricting the number of natives who, as farm labourers, may reside on any farm in the Transvaal;
- (b) in any proceedings for a contravention of this Act the burden of proving that a native is a farm labourer shall be upon the accused;
- (c) until Parliament, acting upon the report of the said commission, has made other provision, no native resident on any farm in the Transvaal or Natal shall be liable to penalties or to be removed from such farm under any law, if at the commencement of this Act he or the head of his family is registered for taxation or other purposes in the Department of Native Affairs as being resident on such farm, nor shall the owner of any farm be liable to the penalties imposed by section five in respect of the occupation of the land by such native; but nothing herein contained shall affect any rights possessed by law by an owner or lessee of a farm to remove any native therefrom (Section 6 of the Natives Land Act, 27 of 1913).

Feinberg (2006: 123) sees the provisions of Section 6 of this Act as an attempt by members of Parliament to restrict the opportunity of squatters and sharecroppers to continue to remain on white-owned farms in this capacity, especially in the Orange Free State. The aim of the anti-squatting sections was to force blacks to be labour-tenants. As a result, a large number of Africans and their families were thrown off the land or chose to leave, rather than give up the privileges they were enjoying, especially in the Orange Free State.

It would seem some of the provisions of the Land Act were not applicable to all South Africa's provinces. For instance, the land buying restrictions of the Land Act applied to the Transvaal and Natal. Even before 1913, the Orange Free State did not allow Africans the right to buy land in that province. Section

8 (2) of the Land Act specifically excluded the Cape Province. The case of *Thomson and Stillwell versus Kama* (1917), confirmed that the Act could not be enforced in the Cape because the voting privilege was based on economic qualifications obtaining there. Equally important, Section 1 (1) of the Land Act included an exception clause, allowing the government to approve black purchases. The existence of this clause was crucial to developments in the 1919s and 1920s (Feinberg 2006: 122).

The Land Act defines a farm labourer as a native who resides on a farm and is *bona fide*, but not necessarily continuously employed by the owner or lessee thereof in domestic service or in farming operations. That definition also provided that if such native resided on one farm and was employed on another farm of the same owner or lessee, he/she should be deemed to have resided, and to have been employed, on the same farm (Section 10 of the Natives Land Act, 27 of 1913).

The SAHW (No date: 2) sums up the key provisions of the 1913 Natives Land Act as:

1. The creation of a number of African “reserves” for the settlement of Black South Africans, which would serve as pools of migrant labour for White-owned farms and urban based industry;
2. The elimination of independent tenancy in “white” rural areas, with the abolition of sharecropping and rental tenancy arrangements.

2.2.2.1 Objections to the Land Act

One of the major reasons for the formation of the African National Congress (ANC) in 1912 (then known as the South African Native National Congress) by African tribes in South Africa could be traced to the land question in South Africa and the fact that Africans were not represented in the Parliament of that time. In the words of Willan (1984: 150) the ANC “... was conceived as an attempt to provide a truly united representation of African opinion and interests”.

Solomon Plaatje was the ANC's first Secretary-General then and played a very significant role in trying, from its inception, to have the Act dismantled.

But to Plaatje's disappointment and the ANC, the government of that time was determined to implement a comprehensive native policy that was acceptable to the country's two most powerful white interest groups, that is, the farmers and the mine-owners. Maize and gold could be described as forming the bedrock of the South Africa's economy then. The government saw the 1913 Native Land Act, 27 of 1913, hereinafter referred as the Land Act, as fulfilling the Native Policy (Willan 1984: 159).

The ANC objected to the Land Act and made a petition to the Union government in which it tabled its views. The PSANNC (1914: 3) expressed the objections of the ANC as follows:

"The Native races most strenuously and earnestly object to the provisions of the Act, where they differentiate against them, because-

- a. They exclude the Native from the free purchase of and dealing in land, a right never challenged hitherto.
- b. With regard to the Natives on the farms of the White people, they interfere with the rights the Natives have exercised for generations. In particular they interfere with the right the Natives have as British Subjects of bargaining with the owners of these farms. In effect this produces a condition of slavery. This is due to a provision, which encourages the farmer to exact unpaid service from the native tenants. In the event of eviction the tenant is unable to settle upon any other farm, except as a farm servant, and therefore is forced to accept almost any conditions the farmer likes to impose upon him. This we claim is slavery.
- c. In point of fact the avowed object of the new law is that of forcing the Native to labour, by making it the only condition of his living on a White man's farm
- d. Under the new Law also no native may occupy or own any land in the Orange Free State."

2.2.2.2 Evictions of the Land Act

The ANC approached the government and tried to dissuade it to abandon the Native Land Act, 27 of 1913 and, in that regard, approached the then Minister of Native Affairs, F. S. Malan, but never got the desired results. The delegation to Malan, led by Plaatje, also impressed upon Malan that they would approach the British government in England about the matter. Malan asked them not to go to England and offered nothing in return. At that time he reasoned that the Act could not be judged as having a detrimental effect to the African people. Malan was approached a month after the implementation of the Act, that is, July 1913. Because at that time it could not be said there were any people that had suffered under the Act, he suggested that patience be exercised till such time that there were “real cases of suffering” (Willan 1984: 163-4).

Even at that early stage there were people who had been evicted by White farmers from their farms. Plaatje is alleged to have asked Malan to provide him with the definition of the word “suffering”. He had already told the Minister about evictions that were taking place in the country as a result of the Act. He questioned that if the evictions of all the families he had already told the Minister about did not amount to “suffering”, then what did the word mean? (Tsela ea Batho, 9 August 1913 in Willan 1987: 163 –4).

Although there was a great deal of opposition from White farmers to the Land Act, it was not for the welfare of the African people. Their selfish and perhaps cruel interest preferred having African tenants being evicted and distributed as farm labour. Small-scale farmers also did not want sharecroppers and labour tenants removed, as these tenants still provided a critical source of income for those who were struggling to survive off the land. The practice was that landowners get half of the sharecroppers’ yield. This saw the state not enforcing the law to its letter. Many farmers took advantage of the provisions, however, and ignored the moratorium on evictions in an effort to gain control of African farm labour (SAHW no date: 2).

By the 1930s tenancy on White owned farms had effectively been controlled. The issue of independent tenants on the absentee landowner's land however still remained unresolved. The provisions of the Land Act for the acquisition of additional land for resettling evicted tenants was still on the books, effectively preventing their removal. These absentee landowner farms now remained the only refuge in White farming areas for evicted farm tenants and those moving from increasingly overcrowded reserve areas. These tenant farms were as a result also becoming increasingly congested (SAHW no date: 4).

It is an open secret that Africans lost the use of land well into the 1930s because of the anti-squatting provisions of the Land Act. The Land Act gave white farmers the power to eject Africans when they wished to follow the law and, slowly, more farmers began to do so. Thus, the consequences of the Land Act, extended long beyond the date on which the law had come into effect, and African leaders continued to express their distress at a continuing iniquity, which grieved the leaders more than any other provision of this law (Feinberg 2006: 128).

2.2.2.3 The impact of the Land Act

One of the conditions prevailing at the time of the promulgation of the Land Act was that African tenants living on white-owned farms were to give half of their produce to the white landowner in exchange for the seed and the right to farm the land. The Land Act made this illegal (Willan 1984 160).

Plaatje (no date: 1 of chapter 3) shares some information on his investigations on the evictions, which he credits to R W Msimang a Johannesburg attorney, who had toured some Districts, compiled a list of some of the sufferers from the Land Act, in May 1914. According to this list, many families were evicted a year after the Act was enforced, and many more were at that time under notice to quit. Msimang, who took a number of sworn statements from the sufferers, mentions that in Natal, for example, all of these instances were reported to the Magistrates and the Chief Natives Commissioner. Every time the evictees were told to find themselves other places, or remain where they were under labour conditions. At Peters and Colworth, seventy-nine and a

hundred families respectively were ejected by the Government itself without providing alternative land for them (Plaatje (no date): 6-7 of chapter 2).

Plaatje (no date: 1 of chapter 3) argues that the argument that the Land Act was applicable to both Whites and Africans does not hold water at all. Since the implementation of the law, he had met many African families on the road with their stock. But he had never met one white man so hounded by the same Land Act, and debarred from living where he pleased. He remarks that the conclusion cannot be avoided that the Land Act was directed exclusively against the Africans.

Those against the Land Act even before its passing had argued that, the government should provide locations to which the evicted Natives could go. But all these representations made no impression upon the Government. This means that when African farm workers were evicted from the farms, they had nowhere to go (Plaatje (no date): 12 of chapter 3).

While the debates on the Land Act were proceeding in Parliament, some farmers already viewed with eager eyes the impending opportunity of making their tenants slaves and appropriating their stock. They approached their tenants with stories about a new Act which made it criminal for anyone to have black tenants and black servants. Few of these Natives, of course, would object to be servants, especially if the white man was not worth working for. But one of the conditions was that the servant's cattle would henceforth work for the landlord free of charge. Then the Natives would decide to leave the farm rather than give the landlord a present of all their life's savings. But the higher up they went the more gloomy was their prospect as the news about the new law was now penetrating every part of the country (Plaatje (no date): 1 of chapter 4).

In his travels Plaatje, (no date: 1-2 of chapter 4) mentions that one farmer met a wandering native family in the town of Bloemhof a week before his visit to the town. He was willing to employ the Native and many more homeless families. His terms were as follows: A monthly wage of £ 2 10s. for each such

family, the husband working the fields, the wife in the house, with an additional 10s. a month for each son, and 5s. for each daughter, but on condition that the Native's cattle were also handed over to work for him. The head of that Native family would have to leave his family and work on the farm, and go out with his wagon and his oxen to earn money whenever and wherever he was told to go, in order that the master may be enabled to pay the stipulated wages.

Needless to say the Natives did not see their way to agreeing with such a one-sided bargain. They moved up country, but only to find the next farmer offering the same terms, and sometimes far worse than the initial ones. The Natives ended up selling all their stock because they had nowhere to stay and for their upkeep resorted to working for gold diggers in Bloemhof (Plaatje (no date): 2 of chapter 4).

In portraying the suffering endured by some of the evictees, Plaatje (No date: 8 of chapter 4) narrates a story of one Kgobadi, who had received a message describing the eviction, without notice of his father-in-law in the Transvaal province. The father-in-law had refused to place his stock, his family, and his person at the disposal of his former landlord. Thereafter the landlord refused to let him remain on his farm except on these conditions. The father-in-law asked that Kgobadi should try and secure a place for him in the Free State as the Transvaal had suddenly become uninhabitable to Natives who could not become servants. Kgobadi himself was in the same predicament. On receiving the message he proceeded with his family and his belongings in a wagon, to inform his people-in-law of his own eviction, without notice, in the Free State, for a similar reason to that which sent his father-in-law adrift. When he refused the extortionate terms, the farm-owner retaliated with an eviction note dated the 30th June 1913. It ordered him to depart by sunset of the same day, failing which his stock would be seized and impounded, and himself handed over to the authorities for trespassing.

2.2.2.4 The Effect of the Land Act

The effect of the enforcement of the provisions of the Land Act was that when a native left a farm on the expiry of his tenancy or otherwise, he was at once rendered homeless. The Act did not allow him to purchase, hire, or lease land anywhere for farming purposes. He could live on a farm only as a servant to the farmer (Petition from the South African Native National Congress (PSANNC) 1914 - 1914: 2).

In the Cape Colony, where it was repeatedly cited that the Land Act was not in force, the Magistrates of East London, King William's Town and Alice prohibited native tenants from re-ploughing their old hired lands in October of 1913. The Magistrates also ordered them to remove their stock from grazing on those farms (PSANNC 1914: 2).

In September 1913, Plaatje set out on another tour to investigate the effects of the Act in other parts of the Free State, and found many more examples of what he had seen during those first weeks in July. African families were wandering but unable to find anywhere else to go and live. Many of them had congregated around Ladybrand in the hope of being able to cross the border into Lesotho (where the Act did not apply), whilst many of those who actually lived in the area had been given notice to quit (Willan 1984: 164).

From their side the farmers were determined to clear their lands of unwanted African squatting households on their farms. They enforced on those remaining on the farms increasingly onerous terms of labour service. Some local Africans resisted. In the ensuing bitter conflict, some settler farmers resorted to chicanery, including impounding of stray livestock, and evictions (Murray 1988: 74).

Farmers did not wait for the Land Act to do things for them, in order to give meaning to their newly acquired authority and to restrict access to their grazing land - they actively pursued African stock that inadvertently ventured onto their property by impounding it. Then they went on to charge the owners of the stock heavy fines for their return. Strangely, and in contrast, White

owned stock straying into the African locations and in African owned land was never impounded (Jones in Murray 1988: 85).

If farm servants and labour-tenants refused to provide labour service under the stipulated conditions, farmers used the courts and the law to persecute them. As a last resort they enlisted the police to evict labour-tenant households from their properties (Murray 1988: 76).

At any given time, whenever Africans were accused of petty theft and other offences, they were apprehended at once, and punishment was very swift and severe. For example, a native girl who was caught stealing mealies from a farmer named Nigrini on the farm Eensgevonden was sentenced to three weeks hard labour. In addition, the entire labour-household to which the young woman belonged was subsequently evicted from that farm (Yates in Murray 1988: 87).

The ANC at its meeting of the 02 October 1916 at Pietermaritzburg concluded under resolution 3 that, "We submit there should be no interference with the existing conditions and vested rights of the Natives, and there should be no removal or ejectment of them from their ancestral lands or from lands they occupied for generations past: but they should have unrestricted liberty in every Province to acquire land wherever and whenever opportunity permits" (RNLA – RNLC no date: 2). This was a direct rejection of the contents of the Land Act, 27 of 1913.

2.2.3 The Native Administration Act, 38 of 1927

The Native Administration Act, 38 of 1927, extended the tentacles of labour controls in rural areas by introducing pass laws to control the movements of rural Africans. It also provided for forceful removals, thus providing the basis upon which the forced removals of the apartheid era were to take place (SAHW no date: 2-3).

The Act could not be compared with the Land Act as far as the eviction of African people was concerned. It could be described as an instrument that in

a certain way complemented what the Land Act was doing. Its focus was much more on the administrative aspect of the African people in the reserves.

Unterhalter (1987: 151) indicates that the Native Administration Act put down the structures for the administration of Africans including Commissioner's Courts where pass law offences were heard. Section 5 allowed the Governor - General to define the boundaries of land allocated to any particular group of people. Above everything else he could also order the removal of people from one area to another without prior notice.

Thus, the Native Administration Act stipulates that:

“... whenever he deems it expedient in the general public interest, order the removal of any tribe or portion thereof or district within the Union upon such conditions as he may determine: Provided that in the case of a tribe objecting to such removal, no such order shall be given unless a resolution approving of the removal has been adopted by both the Houses of Parliament” (Section 5 (1) (b) of the Native Administration Act, 38 of 1927).

The Act provides that: “Any Native who neglects or refuses to comply with any order issued under paragraph (b) of sub-section (1), or with any conditions thereof, shall be guilty of an offence and liable on conviction to a fine not exceeding ten pounds or to imprisonment for any period not exceeding three months”. This section of the Native Administration Act compelled everybody to comply with its spirit (Section 5 (2) of the Native Administration Act, 38 of 1927).

The Native Administration Act also saw to it that the Magistrates concerned fulfilled the contents of the Act as it stipulated that:

“Any magistrate, native commissioner or assistant commissioner within whose area of jurisdiction the place from which the removal is to be made is situate, may, upon such conviction, take all such steps as may be necessary to effect the removal in terms of the order” (Section 5 (3) of the Native Administration Act, 38 of 1927).

An example of people who were forcefully moved from their land in terms of the Native Administration Act are the amaMfengu in the Tsisikama area near Humansdorp in the Eastern Cape. This happened after the recommendations on 21 April 1975, by a parliamentary select committee on Bantu (Native) Affairs. On 14 May 1975, these recommendations were adopted by the House of Assembly (Deliwe 1997: 271).

As a result of these recommendations a group of about 50 people of the amaMfengu in Tsitsikama after a meeting with government officials and a fanfare of promises in 1976, left voluntarily to Keiskammahoek, a small village town in the then Ciskei bantustan. But there are others who resisted the move. The government had other intentions for them, and on the orders of the South African State President they were forcibly moved by the police, and by the end of 1977, all the amaMfengu families had been moved. Tensions developed between those who had left voluntarily and those who were forced to leave Tsitsikama wherein they had been staying since the 19th century (Deliwe 1997: 271).

2.2.4 The Native Trust and Land Act, 18 of 1936

The Native Trust and Land Act, 18 of 1936 (Trust Act) explains that the Natives Land Act, 1913 (Act No 27 of 1913) and itself should be construed as if they formed one Act. It would thus seem the Trust Act complemented what the Land Act had already done, perhaps closing the gaps and the weaknesses that were prevalent in the Land Act. However, it disadvantaged the Africans in general and farm workers (in particular Section 1 of the Native Trust and Land Act, 18 of 1936).

The SAHW (No date: 4) highlights the key provisions of the Trust Act as follows:

1. The Act integrated land identified by the 1913 Act into African reserves, and thereby formalised the separation of White and Black rural areas;
2. The Act established a South African Native Trust (SANT), which purchased all reserve land not yet owned by the state, and had

responsibility for administering African reserve areas. The SANT imposed systems of control over livestock, introduced the division of arable and grazing land, and enforced residential planning and the formation of villages (called 'betterment') under the guise of modernising African agricultural systems;

3. An elaborate system for registering and controlling the distribution of labour tenants and squatters was introduced under the Act. With these provisions, any African unlawfully resident on White-owned land could be evicted; and
4. Areas in White South Africa where Black people owned land were declared "Black Spots", enabling the state to implement measures to remove the owners of this land to the reserves. (Black spots are discussed below under 2.3.2).

Christie and Gaganakis (1989: 81) bluntly explain the Trust Act as having provided the legal framework for the removal of blacks from white farms, and for the consolidation of the reserve areas. The reserve areas thus established were the basis for the National Party's bantustan or homelands policy, which was to be developed in the 1960s and 1970s. They also point out that laws preventing squatting (1968) and labour tenancy (1978) further curtailed the land rights of blacks on white farms.

The SAHW (no date: 4) compliments the sentiments expressed above by stating that the Trust Act finally provided the basis for formalising and extending the size of the African reserve areas. It goes on and makes reference to the fact that the Trust Act also provided the basis for the eviction of African peasants farming on White-owned land. In addition, the labour tenancy was now enforced, effectively tying labour to farms. From that time, only Africans registered in terms of the Trust Act could legally reside on White-owned farms. Africans unlawfully resident on such farms, such as cash paying tenants, were targets for eviction.

It was in 1956 that labour tenancy came under threat with an amendment to the Trust Act. The amendment sought the registration of all labour-tenant

contracts between farmers and labour tenants and the established Labour Tenant Control Boards (LTCB) in each district to administer this and to take responsibility for pegging the number of labour tenants allowed per farm in each district. In addition farmers were to be prohibited from taking on any additional rent-paying tenants (SPP 1983 Vol. 4: 45 in Unterhalter 1987: 94).

The Trust Act spells it out that “No land may be acquired by the Trust other than land –

- (a) within a scheduled native area; or
- (b) within a released area; or
- (c) adjoining land of which the Trust or a native is the registered owner, which is situate in a scheduled area” (Section 10 (2) of the Native Trust and Land Act, 18 of 1936). The aforesaid provisions or stipulations therefore reveal that evictions during the colonial times in South Africa were not confined to farming or urban communities, only. They also took part in rural communities too.

One rural community that saw their land affected by the Trust Act wherein their land was “acquired by the Trust” is Tshatsu Village in King William’s Town. In this instance they were forcefully removed from their land. For instance the land in which the Da Gama Textile Factory is situated adjacent to the Zwelitsha Township is part of the Tshatshu Community land. Before dispossession, the land was used for grazing purposes.

The Tshatshu Claim (TC) at the Regional Land Claims Commission (RLCC) in East London states that, “The Tshatshu community was customarily occupying the land in 1947 when the previous government of the Republic of South Africa took transfer into its own name and registered itself as the owner of the land” (TC no date: 1). The TC (No date: 2) categorically states that the dispossession was effected in terms of the Trust Act.

2.3 The apartheid era

The year 1948 introduced a new era in the South African political landscape when the National Party won that year’s general election. The National Party

was an alliance of white farmers, workers, and petty bourgeoisie, bound together by Afrikaner nationalist ideology. Many of the ideals of this alliance were to be formalised and made government policy. One of the first ideals to be implemented was regulating farm labour through influx control and labour bureaus. This control was to ripple through to the eviction of farm workers (Christie and Gaganakis 1989: 81).

It is also important to understand that before 1948 thousands of Africans owned land outside reserves. These landowners included large numbers of Africans who purchased over 3, 000 farms and lots between 1913 and 1936 in the Transvaal, Natal, and even the Orange Free State plus uncounted African buyers in the Cape Province. Individuals, tribal groups, or people organized into partnerships owned land (Feinberg 1995: 439).

2.1.1 The Group Areas Act, 41 of 1950

Unterhalter (1987: 61–2) contends that the Group Areas Act, 41 of 1950, was indeed the continuation of two earlier laws, the Land Act and the Trust Act, which had institutionalised the division and classification of the South African population into separate groups on the basis of a combination of language, descent or skin colour. The former Act states that there shall be a white group, a native group, a coloured group, and any group of persons which under subsection (2) the Governor- General through a proclamation would declare to be a group (Section 2 (1) of the Group Areas Act, 41 of 1950).

The Group Areas Act was not used to enforce the segregation of the urban African population as this was already provided for in the 1945 Urban Areas Act, but African families living in the area proclaimed as a Coloured, White or Indian Group Areas had to move. The Act gave the government control over all property transactions between the different groups and over occupation of land. Thereafter it could decide where the different groups could live. In other words, the government could move people wherever it wished (Unterhalter 1987: 62).

The implementation of the Group Areas Act involved gross land dispossession. Institutions like the Group Areas Boards (GABs) which it provided for were meant to value the property lost and award compensation. But awards determined by those boards rarely compensated the market value and could not make up for loss of long-term investments. This would mean those dispossessed of their properties were bound to lose (Unterhalter 1987: 64).

It also became an offence to live where people occupying any specific land are not similar to that of a specific individual. One had to live among people of his tribe or racial nature. It became worse when that land was declared to belong to a specific group of people by a proclamation. The Group Areas Act provides that:

“As from the date specified in the relevant proclamation under paragraph (a) of sub-section (1) of section three, and notwithstanding anything contained in any special or other statutory provision relating to the occupation of land or premises, no disqualified person shall occupy and no person shall allow any disqualified person to occupy any land or premises in any group area to which the proclamation relates, except under authority of a permit” (Section 4 (1) of the Group Areas Act, 41 of 1950).

The Group Areas Act defines a “disqualified person” as “... in relation to immovable property, land or premises in any group, means a person who is not a member of the group specified in the relevant proclamation under section three...” In simpler terms, this would come to the race issue, meaning African people are not allowed to be domiciled in white designated areas (Section 1 (viii) of the Group Areas Act, 41 of 1950).

The Group Areas Act gives a broader context to the interpretation above as it states that, “No disqualified person shall occupy and no person shall allow any disqualified person to occupy any land or premises in the controlled area, except under the authority of a permit” (Section 10 (1) of the Group Areas Act, 41 of 1950).

In addition, the Group Areas Act defines a “controlled area” as “... any area which is not a group area or a scheduled native area, location, native village, coloured persons settlement ...” This would suggest a suburb of a town, farming communities of urban areas, or all countryside farming communities that are not within scheduled areas (Section 1 (v) of the Group Areas Act, 41 of 1950).

The Group Areas Act states that:

“If any group area is in terms of a proclamation under paragraph (b) of sub-section (1) of section three a group area for ownership ... no disqualified person and no disqualified company shall, on or after the relevant date specified in the proclamation, acquire any immovable property situate within that area, whether or not in pursuance of any agreement or testamentary disposition entered into or made before that date, except under the authority of a permit: Provided that the provisions of this paragraph shall not render unlawful any acquisition of immovable property by a statutory body” (Section 5 (1) (a) of the Group Areas Act, 41 of 1950).

In short, Section 5 (1) (a) means that no African people were allowed to buy land anywhere in South Africa except in the reserves. Whites were also debarred from buying land in the reserves, but there was no land to be sold to them. It was even difficult to sell land among Africans themselves in the reserves because of its scarcity.

2.3.2 “Black spot” removals and bantustan consolidation

Areas in South Africa that began as reserves under the Glen Grey Act and later became scheduled areas under the Group Areas Act, in later years evolved into bantustans and later into homelands. The various governments of those times gave the bantustans certain executive powers, which saw them graduating to attaining some “independence” within South Africa. One of the greatest weaknesses of that process was that bantustans did not have land. In order to give some meaning to what was happening, the government,

especially the apartheid government, had to provide land to the bantustans. This once more led to people being evicted from pillar to post.

In the same spirit it is also important to bear in mind that there have been three main forms of forced removals from the land; that is, the eviction of labour tenants and farm workers; the dispossession of peasants through “betterment” and other allocation schemes in the bantustans; and the seizure of freehold land in “black spots”. Largely “black spots” cascade from the Trust Act (Unterhalter 1987: 93).

Immediately after its election into power in 1948, the National Party intended to eradicate all black spots as soon as possible. But unfortunately at that time and during the 1950s, their schemes were hampered by a shortage of land to which the affected people could be relocated (Unterhalter 1987: 105).

Davenport (1987: 395) points out that it was only after the death of Dr Hendrik Verwoerd in 1966, South Africa's Prime Minister at that time, that the Government found that the movement of people into the homelands had not happened on anything like the scale intended. In 1967, regulations which set out various kinds of settlement for construction in the homelands, were promulgated. The Government used them as the blueprint for the resettlement policy. Over the next two decades this resulted in the resettlement of over two million people in the African homelands, many of them dependent upon government rations (Davenport 1987: 395).

Something had to be devised, and in 1986 a new legislation, the Border of Particular States Extension Amendment Act, was enacted and its sole purpose was to enforce the incorporation of communities into bantustans. The process provided for the incorporation of certain additional areas of land into bantustans like the Transkei, Bophuthatswana, Venda and Ciskei (TBVC), which were deemed to be nominally independent (Unterhalter 1987: 104).

It is apparent that the removals associated with the consolidation of bantustans affected quite a huge number of people. For instance, Baldwin

(1975: 216) in Unterhalter (1987: 104) contends that the 1973 consolidation plans would have reduced the number of bantustan blocks of land to 82, but would also have involved moving 575, 000 people. On the other hand, Mare (1980: 41) in Unterhalter (1987: 104) states that the 1975 schemes involved moving 1 million people.

The position of farm workers was further eroded in the 1960s and 1970s, when the state embarked on a programme of forced removals. At that time it concentrated in relocating what it called a “surplus” of Africans from farms and urban areas designated white into bantustans. Such removals were notoriously known as “black spot” removals (Budlender in Christie and Gaganakis 1989: 82).

The black spot removal policy had the twofold effect of displacing large numbers of Africans and overcrowding the already failing reserves. The estimated number of people removed to the bantustans in the 1960s and 1970s is about 1.25 million. Most of these people had been living on the land for generations (Budlender in Christie and Gaganakis 1989: 82).

The majority of removals due to bantustan consolidation resulted from “black spots”, which was sometimes dubbed to be “badly situated” areas because they would as an example be areas that were occupied by African people in areas perceived as white ones. Unterhalter (1987: 104-5) aptly describes black spots as “... farms in areas designated ‘White’, held in freehold by Africans”. Places that come to mind are Lesseyton in the Queenstown farming community and Goshen at Cathcart. But an emphasis must be made here that by the end of the apartheid era, these areas had not been affected yet by black spot removals.

Bantustan consolidation entails various forms of removal and the case of the former Ciskei bantustan illustrates this. In 1972, authorities in Pretoria proposed to rationalise the 19 areas deemed to comprise Ciskei. The bantustan was to consist of five areas. As a result thereof, the consolidation

process entailed removing 14 black spots, whose people were moved to resettlement camps in the Keiskammahoek district (Unterhalter 1987: 105).

Secondly, in 1976 two districts, which were Glen Grey and Herschel, formerly designated as part of the former Ciskei, were ceded to the then Transkei bantustan. They were compensated with new land in the south of the region. When the Transkei was made “independent” in 1976, 40, 000 people were moved from Herschel and Glen Grey to Thornhill and Zweledinga areas near Whittlesea/Hewu in the Ciskei, hoping for less repressive conditions (Unterhalter 1987: 105).

Thirdly, the Surplus People Project (SPP) 1983 Vol. 2: 69 in Unterhalter (1987: 105) portrays another picture about what happened with the case of Postdam, a resettlement camp. There, a transit camp was established for evicted farm workers who were expelled from white-owned farms, which had been purchased by the South African Bantu Trust (SABT) in 1979 for the establishment of the bantustan town of Mdantsane. But in this instance the researcher, would point out that the first houses of Mdantsane were built as far back as the beginning of 1963. Most probably, the people of Postdam could have been an additional burden to the overpopulation of Mdantsane.

Unterhalter (1987: 107) also points out that bantustan administrations viewed with some ambivalence the eradication of black spots, which had forced large farming communities into their territories. She saw most of their statements about forced removal as just rhetorical gestures which masked financial and political benefits they reaped from the growth in the population they administered. The bantustan leaders’ public stance was one of staunch opposition to all removals.

The pace of black-spot removals has varied and from 1960 to 1970 and the estimates of the number of people removed from black spots range between 68, 000 and 97, 000. In the early 1970s and in just three years, that is from 1970 to 1973, about 88, 000 people were forced to move and in the next three

years 73, 000 people were removed (Mare 1980: 5-7 in Unterhalter 1987: 110).

2.3.3 The end of labour tenancy and eviction of farm workers

The manner in which labour tenancy was practised throughout the nineteenth century was that labour tenants were allowed to farm small amounts of white-owned land and graze their stock without any charges or rentals. In return they would work for three to six months for the farmer without any wages. The terms and conditions of an agreement between the farmer and the tenants were specified as a binding contract between the two parties. In many a times, the tenant's family would also work on the farm. Most probably contracts of those times were verbal because many of the tenants then, who were African, could neither read nor write (Unterhalter 1987: 94).

Mining also contributed to farm evictions and had its own labour tenancy.

As an example access to land on the farms owned by the Transvaal Gold Mining Estates Limited (TGME) came over time to depend on an acceptance of a labour tenancy system. Under this arrangement, tenants on the company's farms had to provide a certain amount of service to TGME each year, as well as pay rent. This service usually took the form of labour in the company's gold mines, although work in the forest plantations and elsewhere also occurred. Like in any other farming communities, there were differences between farm owners and their labour tenants and the occupation of TGME farmland ended with the final expulsion of the people in 1972. "As in forced relocation elsewhere in South Africa, legal provisions, courts and the power of the state were all beyond the control of the people affected" (Mabin 1987: 402).

Labour tenancy was most common on farms in Natal and the Transvaal; in the Cape farmers had full-time waged farm workers. However, the circumstances that saw the abolishment of labour tenancy elsewhere and the eviction of tenants were used for the removal of farm workers and their families in the Cape. Such evictions escalated during the late 1960s when thousands of farm workers were evicted in the Cape (Unterhalter 1987: 96).

In 1976 a major drive by the East Cape Administration Board (ECAB), a government institution, against unregistered farm workers in the East Cape was mounted. They sent out labour inspectors to enforce long-neglected regulations. In terms of those regulations a registration fee was charged for each African resident on a white-owned farm and that fee was a major incentive for farmers to evict workers whose labour was only required during specific seasons of the year. Expelled farm workers of the Eastern Cape swelled the population of the resettlement camps of the bantustans like the former Ciskei (Unterhalter 1987: 96).

One disadvantage that faced evicted people was that they could keep no livestock and were restricted to 1,525 hectare plots on South African Bantu Trust (SABT) or the South African Development Trust (SADT) land in the bantustans. Sometimes the government provided rudimentary dwellings, which the people were obliged to buy. For them, this meant that their lives were doomed from the onset (Mare 1980: 13 in Unterhalter 1987: 97).

The SPP in Unterhalter (1987: 99) reports that Sada, a bantustan resettlement township in the Eastern Cape, first established in 1964, in 1982, it was badly underhoused, lacked proper facilities, could not support itself locally, and shared a dwindling migrant labour market with all other thousands in Hewu, a district of the former Ciskei homeland. The place has never developed in morale either. It was always too degraded to get run down. All that could be said was that the misery of 1964 had multiplied without reducing the sense of isolation.

A detailed household survey was carried out at Sada in the early 1980s. Its findings revealed that forty seven per cent of the people of Sada were evicted farm workers (Unterhalter 1987: 99). Admittedly, life on farms was not an ideal one, but at least they knew that every single day there would be food on their tables.

In Sada people were dumped either in one-roomed, two-roomed or four-roomed small structures commonly known at that time as “match-boxes”. Unemployed as they were, they were expected to pay a monthly rental. This was a totally different life for them. Previously, while on the farms people could often build reasonable houses for themselves with no rent to pay. They could keep stock and obviously, this could not be so at Sada. Added to this is that there were no working opportunities there and the only way they could find employment was to go to far away places like Johannesburg and Cape Town as migrant workers” (Unterhalter 1987: 99).

Letsoalo in Maphai (1994: 28) echoes what Unterhalter says by stating that people were moved to land that was generally inferior in size and quality to the one they were occupying. A perfect example of that is the case of the amaMfengu that were moved from Tsitsikama to Keiskamahoe discussed above. She (Letsoalo 1994: 28) has a proper description of the nature of Sada when she talks about people being dumped in semi-urban rural ghettos where there were no opportunities for employment.

2.3.4 Private farmer evictions

During the late 1980s evictions of farm-workers and their dependants continued unabated. But unlike the massive ones championed by the government during the 1960s, those of the late 1980s were perpetrated by farmers themselves (Newton 1989: 410).

One of the most important factors in evictions of farm-workers has been the change of farm-ownership. The time-period between 1975 and 1983 saw many of smaller farms being amalgamated into bigger farms owned by consortia and other wealthy farmers. In such big farms the mode of labour changed from manual to machinery. Many farm-workers lost their employment and became victims of farm evictions at the hands of private farm-owners (Newton 1989: 411).

Other reasons that contributed to private farm evictions included drought, changes in type of farming conditions, wages, working hours and labourers

becoming elderly or too sick to work. With regard to the labour tenant system, as children of farm-workers became more exposed to the world outside the farm, they understood the exploitative conditions under which their parents worked. During the eighties the trade union movement in South Africa was at its peak and had many educational drives including small farm towns. The attitude of the children of farm-workers resulted in the whole family being evicted (Newton 1989: 411).

When notified on their pending evictions most families were determined not to leave the farms with which they had been associated for all their lives. The abolition of the influx control in 1986 meant that evicted farm dwellers were legally entitled to move to the cities, but life there was not for them. They would first struggle to get houses there. Unemployment was very high in the country at that time and they did not have skills for working in industries and business. This motivated them to resist evictions and in many instances unsuccessfully (Newton 1989: 411).

When farm-workers resisted evictions, farmers would seek the support of state agencies. Farm-workers would either be criminally prosecuted or civil proceeding be brought against them. They did not have the resources to engage the services of legal practitioners and, in many instances, they would lose those cases. Sometimes they would be charged for illegal squatting and, as a result, farm-workers received heavy fines or prison sentences. In some instances, farm-workers could also sell their stock to raise money with which to pay the fines (Newton 1989: 411-2).

Occasionally, the nature of legal proceedings would be very slow, farmers would become impatient and use other forms to harass the farm-workers. They would impound their stock, destroy their houses and crops and farm-workers would unexpectedly encounter frequent police raids (Newton 1989: 412).

Despite all these odds against the farm-workers there were cases of successful resistance. Newton (1989: 78) narrates that on a government-

owned farm, Elsenburg in Kraaifontein, workers were successful in stopping the eviction of a family. After 23 years of working on that farm a worker was told to leave because he was too sick to work. Shortly after this he died. A few months later the farmer tried to evict his widow and family. A youth group organised a petition against the eviction, but the farm management ignored it. Eventually the farm-workers marched on to the farm's offices in August 1988, and to avoid further conflict, the family was allowed to stay.

2.4 Conclusion

This part of the study gave an outline of farm evictions in South Africa from the colonial to the apartheid eras. In this regard, the discussion looked at the manner in which the Glen Grey Act, the Natives Land Act, the Native Administration Act, the Native Trust and Land Act, and the Group Areas Act were influential in farm evictions in South Africa. The discussion also reflected on the roles played by the successive governments and farmers in farm evictions. The consolidation of bantustans and “black spot” removals was also highlighted.

From the discussion, it becomes apparent that before 1994 farm evictions never took place in isolation, but were part of a broader apartheid policy that saw African people being moved from pillar to post. The policy was first covertly introduced by the colonial powers. The apartheid government was open and rigorous in implementing it.

The impact or the effect of farm evictions was not the concern of both the colonial and the apartheid governments. Evicting people without adequate alternative accommodation did not bother the governments. This was also true to landowners. While this state of affairs continued unabated the conscience of those perpetuating it were oblivious of the fact that they were in the literal sense de-humanising their victims.

It is ironic that when the National Party came into power in 1948 and introduced apartheid, the UN adopted the Universal Declaration of Human Rights. While promising and affirming the dignity of the human person at the international level, the apartheid system introduced draconian laws and policies that dehumanised and segregated South Africans along racial lines. Evictions and removals of blacks on farms and their resettlement to the bantustans is part of this policy that violated the rights of many South Africans.

CHAPTER THREE

THE CULTURE OF HUMAN RIGHTS IN SOUTH AFRICA

3.1 Introduction

The purpose of this chapter is to discuss the culture of human rights in South Africa, under the colonial, apartheid and post apartheid eras. The discussion starts by looking at the definition of human rights. Thereafter it refers to the various human rights documents. These include the Universal Declaration of Human Rights (UDHR), the European Convention on Human Rights (ECHR), the American Declaration of the Rights and Duties of Man, (ADRDM), the American Convention on Human Rights, (ACHR) and the African [Banjul] Charter on Human and Peoples' Rights (ACHPR). Other documents that come into the fore are both the South African Interim Constitution and the Final Constitution.

The discussion will also highlight the institutions involved with human rights, which include the South African Parliament, the Truth and Reconciliation Commission, the Constitutional Court, the Human Rights Commission, the Commission on Restitution of Land Rights and the Land Claims Court. The legal obligations assumed by South Africa under regional and international establishments will also be highlighted.

3.2 Defining human rights

Porter (2000:1) contends that there is a healthy debate in the international community about the definition of human rights and the proper response to human rights violations. At the same time he agrees that nation-states and non-governmental organizations (NGOs) are struggling to find common ground on a broad range of human rights while maintaining respect for cultural difference.

From his side Beitz (2003:2) describes the contents of the Universal Declaration of Human Rights (UDHR) and the two covenants- the International Covenant on Economic, Social, and Cultural Rights (CESRC)

and International Covenant on Civil and Political Rights (CCPR). He contests that the human rights listed in them are ambitious and, in some ways, surprisingly specific aspirations. He states that their provisions read far more like a list of institutional standards than of generalized, abstract rights that might exist in a “state of nature”.

Krasner in Beitz (2003: 4) argues that political scientists sometimes say there is a global “human rights regime”. A “regime” in the jargon of political science is a set of “explicit or implicit principles, norms, rules and decision-making procedures around which actors’ expectations converge in a given area of international relations”.

Beitz (2003: 4) reasons and accepts the thought on a human rights regime, but counters that the term does not fully embrace the reality of international human rights practice. By focusing on norms and decision procedures, the idea of a regime deflects attention from the fact that human rights operate as normative standards in various informal political arenas. He makes an example about the annual human rights compliance reports of the Department of State in the United States of America.

Beitz (2003: 4) argues that the idea of a regime does not reflect the emergent and aspirational character of human rights. He explains his reasoning by juxtaposing human rights politics with financial or trade regimes. He concludes that human rights politics do not aim only to institutionalize and regulate existing interactions; they also seek to propagate ideals and motivate political change.

Freedman (1991: 7) offers a text book approach and stipulates that, “... a human right is a conceptual device, expressed in linguistic form, that assigns priority to certain human or social attributes regarded as essential to the adequate functioning of a human being; that is intended to serve as a protective capsule for those attributes; and that appeals for deliberate action to ensure such protection”.

Without necessarily defining what human rights are, English and Stapleton (1997:1) explain that a human right is an entitlement one owns; a claim by one against another to the extent that by exercising one's right, one does not prevent others from exercising theirs.

Returning back to Beitz (2003: 2), he describes the UDHR as a remarkable document, but also adds that its name, regrettably, is far better known than its contents. He goes on and mentions that it consists of thirty articles which state a broad array of aims that are supposed to serve as "...a common standard of achievement for all peoples and all nations". Unlike the UDHR, Beitz (2003: 2) suggests that the covenants have the force of law. They elaborate on the aims of the UDHR and seek to put them into a form that has legal effect.

3.3 Human rights documents

The human rights documents emanating from the institutions like the United Nations, the European Union and the African Union are the source of the concept of human rights. Added to this is the fact that these organizations shaped contemporary views of what human rights are and which particular norms are human rights. It is therefore appropriate to refer to these instruments when human rights are under discussion (Nickel 2003: 4).

English and Stapleton (1997: 1) contend that human rights are also protected in the constitutions and national laws of many states around the world. The South African constitution is one example. Furthermore, human rights are protected by many treaties or agreements that states have signed which oblige them to ensure that these rights and freedoms are respected. The CCPR and the CESCR come to mind.

3.3.1 The Universal Declaration of Human Rights

While the Universal Declaration of Human Rights (UDHR) does not necessarily define what human rights are, it gives the basis for formulating

assumptions of what they are. In its preamble it makes reference to human rights:

“... as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction” (UDHR).

Nickel (2003: 5) alludes to the fact that the UDHR was a declaration with a set of recommended standards rather than a treaty, because it recommended promoting human rights through “teaching and education” and by “measures, national and international, to secure universal and effective recognition and observance”.

3.3.2 The European Convention on Human Rights

The European Convention on Human Rights (ECHR) too does not have a specific definition of human rights but covers norms and principles, civil and political rights. Its rights are similar to the first twenty-one articles of the UDHR. Economic and social rights were treated in a separate document, the European Social Charter adopted in 1961 (Nickel 2003: 5).

3.3.3 The Inter-American System

The Inter- American System is broadly similar to the European system. Its main documents are the American Declaration of the Rights and Duties of Man (1948) (ADRDM), and The American Convention on Human Rights, (1969), (ACHR) (Nickel 2003: 5).

3.3.4 The African System

The African System covers the countries of the African continent and it has a regional human rights treaty. The treaty formerly established by the Organization of African Unity (now the African Union) is the African Charter on Human and Peoples Rights (ACHPR).

The contents of the African [Banjul] Charter on Human and People's Rights (ACHPR) among others, state that, "...fundamental human rights stem from the attributes of human beings which justifies their national and international protection and on the other hand that the reality and respect of peoples rights should necessarily guarantee human rights" (ACHPR: 1).

3.3.5 The interim constitution

Since the advent of the democratic government in April 1994, South Africa has had an Interim Constitution, that is the Republic of South Africa Constitution Act, 200 of 1993. Its effectiveness ended when the final constitution, the Constitution of the Republic of South Africa Act, of 1996 was adopted in 1997. The interim constitution had a chapter on the fundamental human rights, commonly referred to as the Bill of Rights (Sarkin 1998: 630).

The Bill of Rights ensured, for the first time in South Africa's history, that citizens of the land were protected from arbitrary oppressive practices of the state, which included among others, detention without trial. The Interim Constitution also facilitated the establishment of rights institutions like the Human Rights Commission and the Commission on the Restitution of Land Rights. It also provided for a process, embodied in the Truth and Reconciliation Commission (TRC), whereby amnesty could be obtained for politically motivated crimes committed during the apartheid years (Sarkin 1998: 630).

Sarkin (1998: 630) argues that these institutions were the pillars of the Interim Constitution that created a framework in which human rights would be respected. But, he also cautions that these institutions are functioning with

different levels of energy and efficiency and some have yet to demonstrate their capacity for achieving the objectives for which they were established.

Liebenberg (2000: 7) compliments Sarkin by stating that the Interim Constitution also provided for traditional civil and political rights such as the rights to vote, to a fair trial, and freedom of speech and assembly. It also included rights like the right of access to information; the right to administrative justice; a qualified right to the free pursuit of economic activity; the right to an environment which is not detrimental to health or well-being; the right of children to security, basic nutrition, basic health and social services; language and cultural rights; and educational rights. Labour and property rights were part of the Interim Constitution, too.

The adoption of the Constitution was a watershed for the country because for the first time in South Africa's history the old system of parliamentary sovereignty was replaced by a system of constitutional democracy. This time around the constitution became the supreme law of the country. This means that only the courts could interpret and declare laws legal or illegal. The courts could also review legislative and executive actions (Parliament and other institutions of state) and declare their decisions invalid. In the past, this was the prerogative of Parliament (Sarkin 1998: 630).

3.3.6 The final constitution

Hoffman (2007: 1) argues that the final constitution, that is the Constitution of the Republic of South Africa Act, of 1996 has a Bill of Rights which entrenches the dignity, equality and freedom of all people. This forms the bedrock of the country's legal order. He contends that it is designed to set a framework within which all people flourish and are secure in their own identity, whether that identity is derived from language, religion, culture or the sense of community from which such association flows.

The constitution is a well-crafted recipe for stability and safety for all. He points out that a fully functional constitutional democracy creates a climate conducive to the formation of a healthy, wealthy and contented society. He

further argues that in this type of a dispensation it is essential that the will of the majority of voters be centred on the value system and precepts of the constitution. This, he believes, is achieved through the separation of powers between the three branches of government, namely that laws are made by parliament, administered by the executive and enforced by the judiciary (Hoffman 2007: 1).

Unlike in the old colonial and apartheid South Africa where Parliament was supreme and unchallengeable, the policies and practices of the government under the Final Constitution, can be constitutionally challenged in court. If a law or policy or practice does not satisfy constitutional principles it can be declared invalid by the courts for a lack of compliance with the Constitution. This means that the manner in which the Constitutional Court interprets a legal or constitutional principle is the end result and the legislature and executive are bound by the Court's decision (Hoffman 2007: 1).

The case of the Speaker of the National Assembly v De Lille and Another (SCA 297/98) is a good example of where a decision of the National Assembly was nullified by the court because it was not constitutional.

The Cape High Court set aside the resolutions of Parliament. The National Assembly appealed to the Supreme Court of Appeal and lost (Speaker of the National Assembly v De Lille and Another (SCA 297/98 :22)).

Hoffman (2007: 1) cites judgments of the Constitutional Court that have led to the redrafting of laws in South Africa. He mentions for example the dispensation relating to marriages between persons of the same gender, and the adjustment of policy as in the TAC litigation, which concerned access to treatment for those suffering from HIV/AIDS, and the abolition of the death penalty. The cases of Fourie and Another v Minister of Home Affairs and Another (CCT 25/03) and Minister of Health and Others v Treatment Action Campaign and Others (CCT9/02) are some of the instances where the Constitutional Court ordered the redrafting of Acts of Parliament.

In order for the current constitutional dispensation to be sustainable it is essential that the independence of the judiciary and the separation of powers are respected and maintained by the other branches of government. This in practice entails a parliament, which is more than a rubber stamp for the executive, and an executive, which adheres to its area of constitutional competence (Hoffman 2007: 1).

Sarkin (1998: 632) views that the Bill of Rights contained in the Final Constitution, improves on the Interim Bill of Rights in certain aspects such as the enshrinement of socio-economic rights. However, he points out that the language used circumscribes most of these rights by placing the duty on the state “to take reasonable legislative and other measures” to “progressively realize” such rights. Thus the realization of socio-economic rights will largely depend on the state’s ability and willingness. Moreover, the availability of resources will influence the state as to how far it can provide on socio-economic rights.

In his analysis Sarkin (1998: 634) contends that the entrenchment of a human rights culture requires a stricter test to apply to the limitation of rights. In other words, rights have limitations. For instance one’s rights cannot impede on others’ rights. Using the history of the country’s abuse of human rights he argues for the constitution to give maximum protection of human rights. But he concedes that there are difficult challenges involved in the current transformation and in the building of a human rights culture. Incidentally, Section 36 (1) of the South African Constitution stipulates that the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open democratic society based on human dignity, equality and freedom (Section 36 (1) of the Constitution of the Republic of South Africa, Act 108 of 1996).

One concern raised by Sarkin (1998:634) is that the constitutional negotiations resulted in increased executive and parliamentary power. This, he states, is in contrast to the weaknesses that exist in the Constitution for the protection of human rights mechanisms. He makes an example about checks

and balances on the exercise of powers to appoint judges and members of human rights institutions and cites the process as problematic. In the same spirit, he also points out some of the strengths of the Constitution by making reference to the fact that the Public Protector, the Human Rights Commission, the Commission for the Promotion and Protection of the Rights of Cultural, Religious, and Linguistic Communities, the Commission for Gender Equality, the Auditor-General, and the Electoral Commission are a sign of commitment to constitutional democracy and human rights.

On the other hand Liebenberg (2000: 10-11) regards the adoption of the new Constitution as representing a milestone in the history of human rights in South Africa. She makes reference to the preamble to the Constitution that states that the latter is “adopted so as to heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights; lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law; improve the quality of life of all citizens and free the potential of each person; and build a united and democratic South Africa able to take its rightful place as a sovereign state in the family of nations.”

Liebenberg's (2000: 11) extraction from Section 7 (1) of the South African Constitution, portrays the Bill of Rights in the Final Constitution as a cornerstone of democracy in South Africa, which affirms the democratic values of human dignity, equality and freedom (Section 7 (1) of the Constitution of the Republic of South Africa, Act 108 of 1996). In addition, the Constitution provides civil, political as well as economic, social and cultural rights. The Bill of Rights, is also innovative in that it moves beyond paying lip-service to the indivisibility and interdependence of human rights. It is because the principles contained therein are given concrete effect by subjecting them to judicial enforcement. In other words, they are legal obligations, too. Section 7 (2) of the South African Constitution requires that the state respect, protect, promote and fulfil the rights in the Bill of Rights (Section 7 (2) of the Constitution of the Republic of South Africa, Act 108 of 1996).

Whenever one's rights have been violated a remedy can be obtained from the courts. Considering that in the past this could happen without any compensation, this is a significant safeguard for human rights. However, the courts should not be seen as the primary institution for the realisation of the rights in the Bill of Rights. As Section 7 (2) of the South African Constitution requires all organs of State are obliged to respect, protect, promote and fulfil them. (Section 7 (2) of the Constitution of the Republic of South Africa, Act 108 of 1996). One can also seek redress for any of the organs of state that have ignored them for whatever reason. Policies of all the spheres of government must always be human rights compliant (Liebenberg 2000: 13).

3.4 Human rights institutions

Sarkin (1998: 629) claims that to determine whether a human rights culture is being developed in South Africa it is important to assess the role and impact of the various institutions and structures that play a role in the promotion and fostering of a human rights culture.

3.4.1 Parliament

When the new government came to power, Sarkin (1998: 637) contends that it committed itself to the democratic principles of transparency, public participation in government, and above everything else, the protection of human rights. Parliament also expressed its intent to play a more active role than in the past, and to counter the perception that it was a mere rubber-stamp for executive decisions. Sarkin (1998: 637) goes on and states that these aims have required a radical transformation of the legislative process and the parliamentary infrastructure. Parliamentary committee meetings have been, in general, opened to the public and the committee process has been adapted to encourage the public to present their views on proposed legislation.

In certain instances, the promulgation of legislation halted simply because there has not been enough or proper consultation. Currently the Communal Land Rights Act, 11 of 2004 (CLaRA) cannot be implemented because of

allegations of inadequate consultation before the Act being passed by Parliament (Sarkin 1998: 637). The Constitutional Court ruling in the case of the Matatiele Municipality and Others v President of the Republic of South Africa and Others, and Doctors for Life International v Speaker of the National Assembly and Others provide a clear picture regarding the nullification of Parliament's decisions by the Constitutional Court on the issue of adequate consultation (Matatiele Municipality and others v President of the Republic of South Africa and Others (CCT 73/05) and Doctors for Life International v Speaker of the National Assembly and Others (CCT 12/05).

Sarkin (1998: 638-9) contends that some of the legislation enacted by the new Parliament has been controversial from a human rights perspective. He cites the Film and Publications Act in relation to pornography, the Schools Act in relation to education, and the Choice on Termination of Pregnancy Act in relation to abortion. The impact of proportional representation, in which parliamentary seats are allocated from party lists, was a crucial part of the process surrounding the abortion issue in Parliament, particularly in relation to whether the African National Congress (ANC) would allow members to vote according to their individual beliefs. The party line was towed.

In 1996, Parliament set up a number of human rights institutions envisaged in the Interim Constitution; which included, among others, the Truth and Reconciliation Commission, the Human Rights Commission, and the Commission on Restitution of Land Rights (Sarkin 1998: 640-1).

3.4.2 The Truth and Reconciliation Commission

The Interim Constitution provided for a process to be established so that amnesty could be granted to individuals who had committed politically motivated crimes during the colonial and apartheid eras in South Africa. A Truth and Reconciliation Commission (TRC) was identified as the appropriate mechanism for coming to terms with the past (Sarkin 1998: 657).

As Liebenberg (2000: 14) states, the Promotion of National Unity and Reconciliation Act, 34 of 1995 (PNURA) was adopted to give effect to the

establishment of the TRC. Its objectives were to: establish as complete a picture as possible of the causes, nature and extent of gross human rights violations perpetrated between 1960 and 1994 by conducting investigations and hearings; facilitate the granting of amnesty on condition of a full, truthful disclosure of acts with a political objective and complying with the requirements of the Act; establish and make known the fate of victims and restoring their human and civil dignity by granting them an opportunity to relate their own accounts of the violations they suffered, and by recommending reparation measures; and to compile a report of findings which contains recommendations of measures to prevent future violations of human rights.

Gibson (2004: 5) adds that one of the stated objectives of the truth and reconciliation process in South Africa was the creation of a culture of respect for human rights. The political culture of the country also had to subscribe to the spirit of respecting human rights (Gibson 2004: 6).

Liebenberg (2000:14) emphasises the point that the main focus of the TRC hearings was on gross violations of civil and political rights defined as the killing, abduction, torture or severe ill treatment of any person. She points out that the TRC also had a mandate to investigate systematic patterns of abuse, and the causes, circumstances and context that led to gross violations of human rights. As part of this mandate, the TRC investigated systematic violations of human rights under apartheid. These included public hearings on forced removals.

The PNURA limited the TRC to the investigation of gross violations of human rights. In its definition of gross violations, the PNURA includes killing, abduction, torture, or severe ill-treatment of any person, or any attempt, conspiracy, incitement, instigation, command, or procurement to commit any of these acts. This means that other general injustices like detention without trial, jailing for pass law offences, and the forcible removal of millions of people, do not fall within the jurisdiction of the TRC (Sarkin 1998: 659).

3.4.3 The Constitutional Court

Until the years immediately preceding constitutional negotiations, the idea of a specialized Constitutional Court had not existed in South Africa. The structure and hierarchy of the courts and the legal profession resembled the British system. The highest court in all criminal and civil matters was the Appellate Division of the Supreme Court in Bloemfontein. The Supreme Court furthermore consisted of provincial divisions, each headed by a Judge-President, and some local divisions. Magistrates' Courts, operating on a regional district level, are the lower courts sometimes termed the inferior courts. No tradition of separate hierarchies of specialized courts existed (van der Westhuizen in Lindelof 1996: 9).

When it became clear that South Africa was likely to have a Constitution with a Bill of Rights, the question as to which court should be entrusted with guarding and enforcing the new Constitution became highly topical. The main arguments in favour of the existing court structure included a recognition of the existence and expertise of judges, the fear that a Constitutional Court would be highly politicized and the view that all courts rather than a specialized court should be involved in constitutional and human rights issues, for the purposes of developing a strong human rights culture. Arguments for a specialized Constitutional Court included the recognition of the need for a new constitutional jurisprudence and indeed legal philosophy to be developed speedily by a single source of authoritative decisions, rather than having conflicting decisions by different courts during the early years of the new Constitution. There was an argument that the existing courts, staffed by white male judges appointed during the apartheid era, could not legitimately be entrusted with the power to enforce the new democratic Constitution in which people had to gain confidence (van der Westhuizen in Lindelof 1996: 10).

The role of the courts, particularly with the introduction of the Constitutional Court, changed radically with the introduction of the justiciable Interim Constitution and its Bill of Rights, which became the supreme law of the country. Courts evaluate legislation enacted by Parliament or other bodies under the Bill of Rights when the law's constitutionality is at issue (Sarkin

1998: 641). For instance in case of the State vs Makwanyane the two accused, that is, T Makwanyane and M Mchunu were convicted in the Witwatersrand Local Division of the Supreme Court on four counts of murder, one count of attempted murder and one count of robbery with aggravating circumstances. Ultimately the Constitutional Court ordered that: "...In terms of section 98 (5) of the Constitution and with effect from the date of this order, the provisions of paragraphs (a), (c), (d), (e) and (f) of section 277 (1) of the Criminal Procedure Act, and all corresponding provisions of other legislation sanctioning capital punishment which are in force in any part of the national territory in terms of section 229, are declared inconsistent with the Constitution and accordingly, to be invalid" (State v T Makwanyane and M Mchunu – Case No. CCT/3/94).

The courts have an important role to play in providing redress for violations of human rights. The Constitution has created a number of different courts, including Magistrates' Courts, High Courts, the Supreme Court of Appeal and the Constitutional Court. The Constitutional Court is the highest court for deciding constitutional matters and that encompasses human rights (Liebenberg 2000: 34).

Liebenberg (2000: 34) states that under Section 38 of the South African Constitution, the Bill of Rights confers legal standing on a wide range of persons to approach a court for appropriate relief when human rights are infringed or threatened. These include anyone acting as a member of or in the interest of, a group or class of persons, and anyone acting in the public interest (Section 38 of the Constitution of the Republic of South Africa, Act 108 of 1996).

Liebenberg (2000: 34) adds that the courts are also given broad remedial powers in constitutional matters. When deciding a constitutional matter within its jurisdiction, a court must declare invalid any law or conduct that is inconsistent with the Constitution, and may make any order that is just and equitable (Section 2 of the Constitution of the Republic of South Africa, Act 108 of 1996).

3.4.4 The Human Rights Commission

The establishment of the Human Rights Commission (SAHRC) was an important step towards the promotion of human rights in South Africa. The major function of the Commission is to promote human rights through a variety of methods, which include education and raising community awareness; making recommendations to Parliament; reviewing legislation; and, importantly, investigating alleged violations of fundamental rights and assisting those affected to secure redress. Coincidentally, in September 2007, the SAHRC held public hearings on evictions of people living and working on farms in South Africa. At the time of writing, it had not yet published its findings (Sarkin 1998 : 649).

The Commission is the most important human rights structure in South Africa. The hope is that the Commission will develop into a thriving, credible, and viable body capable of discharging its task of promoting human rights (Sarkin 1998: 651).

Each year, the Commission must require relevant organs of state to provide it with information on the measures that they have taken towards the realisation of the rights in the Bill of Rights concerning housing, health care, food, water, social security, education and the environment. Land is also included in its last report (Liebenberg 2000: 31).

3.4.5 The Commission on the Restitution of Land Rights

The land rights in the Constitution require government to institute three programmes of land reform. Those are the restitution for those who lost land through racial discrimination; redistribution to promote equitable access to land; and tenure reform for those whose rights in land are insecure as a result of past racial discrimination and people living and working on farms are part of those falling under tenure reform. Liebenberg (2000: 23-24) argues that the land reform programme adopted by the government addresses each of these constitutional requirements.

Geoff Budlender, the former Director-General of the Department of Land Affairs is quoted in Liebenberg (2000: 23-24) as having observed that “The land reform programme of the government started on the premise that, wherever possible, it should be rights-based. The intention was to create a platform of land rights. By anyone’s standards, a pretty full suite of programmes and laws has been instituted with legally enforceable rights as the foundation and bedrock”.

The Commission on the Restitution of Land Rights (CRLR) has the responsibility of receiving, investigating, and taking claims forward. The law details how claims must occur and how the CRLR must deal with them. The court is tasked with the responsibility of ratifying agreements mediated by the CRLR, as well as arbitrating in cases where no agreement can be reached (Sarkin 1998: 654).

In the area of land restitution, the major piece of legislation adopted is the Restitution of Land Rights Act 22 Of 1994. This Act establishes the legal framework and mechanisms for giving effect to the constitutional right to restitution of land or equitable redress (e.g. alternative land, compensation) for persons who were dispossessed of their land after 1913 through racially discriminatory laws or practices (Liebenberg 2000: 24).

3.4.6 The Land Claims Court

The Land Claims Court (LCC) was established in 1996. It is a specialist court, which performs an independent adjudicatory function. It hears disputes arising from those laws which underpin South Africa's land reform initiative. These are the Restitution of Land Rights Act 22 of 1994, the Land Reform (Labour Tenants) Act 3 of 1996 and the Extension of Security of Tenure Act 62 of 1997 (www.law.wits.ac.za/lcc/about.html - 2007: 1).

The LCC enjoys the same status as the High Court of South Africa. Appeals are lodged with the Supreme Court of Appeal and, in appropriate cases, to the Constitutional Court. Aspects of the Court's jurisdiction and proceedings are peculiar to the functions it performs, for example, it may conduct any part of

its proceedings on an informal or inquisitorial basis and it may convene hearings in any part of the country to make it more accessible. The LCC has promulgated its own set of rules, which sets out its procedure in detail (www.law.wits.ac.za/lcc/about.html 2007: 1-2).

3.4.7 South Africa's International Human Rights Obligations

To contextualise South Africa's international human rights obligations and culture it is important to have an understanding of what it is expected from the country by the international community. For over half a century the apartheid state defied the United Nations and dismissed the United Nations Declaration of Human Rights as communist propaganda. The apartheid regime also vilified the declarations and resolutions of various United Nations agencies. In these remarks Sarkin reveals that over the years there was animosity between the apartheid government and the UN which led to its suspension (Sarkin 1998: 635).

Until a treaty was incorporated into South African law by an Act of Parliament, the international human rights instruments were not legally binding within the country. In other words it would remain domestically not enforceable until it were enacted into law. But, upon ratification, surely they would be enforceable in South Africa if Parliament expressly so provided and the agreement was not inconsistent with the constitution (Sarkin 1998: 635).

As Liebenberg (2000: 18) says and in reference to Section 231 of the South African Constitution, the idea of an international agreement only becoming law in South Africa when it is enacted into law by national legislation is provided for in the South African Constitution. Therefore, there can never be any fears that such an agreement could be declared null and void by any court after it has been enacted by Parliament. Perhaps, only when legal procedures have not been followed when enacting that law (Section 231(2) of the Constitution of the Republic of South Africa, Act 108 of 1996).

Interestingly and in contrast, Sarkin (1998: 635) states that Chapter 14 of the Final Constitution Section 231(2) provides that: except for agreements which

are technical, administrative, or executive in nature, an international agreement is only binding on South Africa after it has been approved by resolution in both houses of Parliament, which are the National Assembly and the National Council of Provinces. In addition, Section 231 (4) of the South African Constitution states that the international agreement only becomes law in South Africa when it is enacted into law by national legislation. (Section 231 of the Constitution of the Republic of South Africa, Act 108 of 1996).

Furthermore, an agreement approved by Parliament only becomes law if it is consistent with the Constitution or an Act of Parliament. This is also true of customary international law. When interpreting the Bill of Rights, the courts are directed to consider international law and may consider foreign law, too (Sections 39 and 231 of the Constitution of the Republic of South Africa, Act 108 of 1996).

South Africa signed three major human rights treaties in 1994, which are the CESCRR and the CCPR, and the Convention on the Elimination of All Forms of Racial Discrimination (CERD). Further, in 1995 three instruments were ratified by South Africa, namely, the Convention on the Rights of the Child (CRC); the Convention on the Elimination of Discrimination Against Women (CEDAW); and the Protocols to the Geneva Convention (PGC) (1949). In addition, Parliament recommended ratification of two more conventions, the Convention Relating to the Status of Refugees (CRSR) and the Convention on Specific Aspects of Refugee Problems in Africa (CSARP). Only two instruments were ratified in 1996, that is, the African Charter on Human and Peoples Rights (ACHPR) and the Convention Relating to the Status of Refugees (CRSR) (Sarkin 1998: 636).

In later years South Africa ratified among other instruments the Statute of the International Criminal Court (27 November 2000), the Rotterdam Convention (15 September 2006), and the Optional Protocol to the Convention on the Rights of Persons with Disabilities (31 March 2007). As at 31 May 2007 South Africa was a signatory to 37 instruments (Volodin 2007 :22).

To the foregoing international human rights treaties added to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) (CATOCIDTP). South Africa has signed but, at the date of writing, is yet to ratify the International Covenant on Economic, Social and Cultural Rights (1976) (Liebenberg 2000: 17).

To fulfil its international legal obligations Parliament passed, among others, the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000. The Act meets the constitutional injunction requiring the enactment of national legislation to prevent or prohibit unfair discrimination. The legislation is also an important vehicle to facilitate compliance with CERD and CEDAW (Liebenberg 2000 :18).

Since 1994, the democratic government in South Africa has adopted a wide range of new policies and laws that sought, as a first priority, to dismantle the discriminatory imposing structure of apartheid laws. There was also a need to create a unified administration out of the fragmented bureaucracies that were inherited from the apartheid regime. The fragmented bureaucracies were the “tentacles” that gave more life to the apartheid system (Liebenberg 2000:21).

Many of these laws, according to Liebenberg (2000: 21), were adopted to give effect to the rights in the Bill of Rights contained in the UDHR. She argues that the Bill of Rights serves as an important impetus for the enactment of legislation and has also influenced the content of legislation. Therefore, she states that it would be misleading to assess the impact of human rights in South Africa solely, or even primarily, on the basis of court cases.

The influence of human rights can be seen in a range of legislative and policy measures adopted to give effect to the government’s human rights commitments, Liebenberg (2000: 21) adds. An illustrative example of these measures can be seen in the Extension of the Security of Tenure Act, 62 of 1996 (ESTA). Section 5 of ESTA stipulates and concurs with the South African Constitution. It provides that, subject to limitations which are reasonable and justifiable in an open and democratic society based on human

dignity, equality and freedom, an occupier, an owner and a person in charge shall have the right to human dignity; freedom and security of the person; privacy; freedom of religion, belief and opinion and of expression; freedom of association; and freedom of movement.

Wegerif in Roth et al. (2004:231) acknowledges the presence of these rights, but also points out that the Act unfortunately goes on and limits some of these rights in Section 6. It provides that an occupier shall have the right to receive bona fide visitors at reasonable times and for reasonable periods provided that the owner or person in charge may impose reasonable conditions that are normally applicable to visitors entering such land in order to safeguard life or property or to prevent the undue disruption of work on the land; and the occupier shall be liable for any act, omission or conduct of any of his or her visitors causing damage to others while such a visitor is on the land.

Wegerif in Roth et al. (2004:231) contends that these provisions limit the rights of farm dwellers to second-class rights subject to limitations by the owner of the land. Be that as it may, it should also be noted here that when farm evictions take place, they happen as if farm occupiers have no rights at all.

3.5 Human rights culture in South Africa

The human rights culture in South Africa is discussed here under colonialism, apartheid and human rights violations. All the colonial and the apartheid constitutions in South Africa, that is, the 1909, the 1961 and the 1983 South African constitutions were totally silent about the promotion of a human rights culture in South Africa.

Gibson (2004: 6) explains human rights culture as one in which people value human rights highly, are unwilling to sacrifice them under most circumstances, and jealously guard against intrusions into them. Such a culture has the potential of becoming a very powerful and effective mechanism against political repression. Fair enough, like anywhere else there could be those who escape its preventive measures, but it would still be powerful and effective.

Presumably in the past in South Africa abuses of human rights were tolerated if not accepted. The state could be described as having taken a lead in that, if people could die of unnatural causes in police custody and no one could be found liable for such deaths. Conceivably, this view characterized both the defenders and opponents of apartheid, in the sense that a struggle against a system as radically evil as apartheid might well have seemed to justify deviations from the strict observance of human rights (Gibson 2004: 7).

Gibson (2004: 8) mentions that the meaning of the term human rights culture as intended by the writers of the PNURA is not entirely clear. He attributes this to the fact that there are many different interpretations of the term. He suggests that the values incorporated within the concept human rights seem to include political tolerance, rights consciousness, support for due process, respect for life, support for the rule of law, and even support for democratic institutions and processes more generally.

Gibson (2004: 8) then suggests that social scientists must take the concept more seriously and treat it more systematically and rigorously. One simple distinction, hinted at already, is that human rights can be enhanced by certain institutional structures like an independent judiciary; and by certain political attitudes and values held by ordinary people within the polity. Institutions and cultures are two separate entities.

Some who have written about human rights in South Africa emphasize the institutional framework underpinning of such a culture. Gibson (2004: 8-9) in making reference to Sarkin (1998), for instance, discusses the wide range of institutions connected to human rights enforcement in South Africa which includes the Constitutional Court, the Human Rights Commission, and the Commission on the Restitution of Land Rights. Sarkin's concern is whether there are institutional mechanisms that might contribute to the widening and the deepening of human rights protections in South Africa. The institutional infrastructure necessary to create and defend human rights in South Africa is surely crucial for this purpose.

Gibson (2004: 9-10) suggests that one way of looking at the question of whether South Africa has developed a culture respectful of human rights is to examine the attitudes and values of ordinary South Africans. The question that would have to be asked is how much value do ordinary people attach to human rights. In the same spirit, it would have to be understood just exactly what attitudes and values are central to human rights. Among these values is the rule of law. The rule of law, requires adherence to for rule-bound governmental and individual action. Among others, it also requires: political tolerance which entails accepting that those who differ with their political ideas of their opponents have a right to exist in their midst without fear, threat or danger; rights consciousness, which in this instance means the willingness to assert to individual rights against the dominant political, social, and economic institutions in society; support for due process, which includes commitment to non-arbitrary, explicit, and accountable procedures governing the coercive power of the state; commitment to individual freedom, which takes note that undergirding all of these, is a basic dedication to anything that enhances the ability of individuals to make unhindered choices; and commitment to democratic institutions and processes and under human rights that means rights of both majorities and minorities are essential to making a democracy function effectively.

Gibson (2004:10) declares that the foregoing concepts provide some guidance for an empirical inquiry into attitudes towards human rights. He also alludes that each requires a great deal more consideration and explication.

3.5.1 Human rights culture under colonialism

The contemporary South Africa did not begin in 1994 but its roots go as far back as the Union of South Africa in 1910. That would suggest that contextually, it would be reasonable to trace the country's human rights culture from 1910. Bukurura (2005: 4) reveals that the South Africa Act 1909 (9 Edw VII) passed by British Parliament received Royal assent of 20 September 1909 and that brought about the Union Constitution with effect from the 31 May 1910.

van der Westhuizen in Lindelof (1996: 5) explains that this happened following two and a half centuries of colonization, where hostilities between European settlers and the indigenous African people as well as between descendants of the Dutch (Afrikaners) and the British Settlers (English) had been prevalent. The main ingredient of the Union Constitution was the system of parliamentary sovereignty. This means that the country's parliament was the supreme institution and no other institution, including courts, could overrule on any issues or act that it had approved. In addition, the black majority of the country was excluded from the vote. The system entrenched white political power, turning a deaf ear to opinions expressed by indigenous Africans (Bukurura 2005: 4).

In some of the colonies of the Union, that is the Cape of Good Hope and Natal, blacks enjoyed limited voting rights. During the mid 1950s, the government overrode an entrenched clause in the 1910 Constitution so as to enable to remove black voters from the common roll. It also enforced residential segregation, expropriating homes where necessary and policing forced removals into reserves (Deane 2005:17).

The two legislative pillars of apartheid, the Natives Land Act and the Group Areas Act, were enacted during the colonial era. They proved to be economically crippling to the African people in both urban and rural communities. It became very difficult for African people to engage in any meaningful business activities because of the Acts. In this instance, the Trust and Land Act of 1936 is brought into par with the Land Act. As we may recall in Chapter 2 the impact of the laws is fairly elaborated on (Deane 2005:19).

Through all the years there was resistance by Blacks against both colonialism and apartheid. The African National Congress (ANC) which was formed in 1912 is one of the organisations that took the lead in that resistance. More active resistance started to emerge during the 1950s and the Defiance Campaign led by the ANC in 1952 is another example. An armed struggle was launched on in the early 1960s after the banning of liberation movements

in the country. Before the banning people had handed themselves to various police stations for arrest for not having passes and others burnt them in public. The police killed 69 people and injured others in Sharpeville on the 21 March 1960, now commemorated as annual Human Rights Day (van der Westhuizen in Lindelof 1996: 6).

3.5.2 Human rights culture under apartheid

The Saturday Weekend Argus (20 March 2004) echoes many of the sentiments expressed above and maintains that the idea of human rights was not only foreign to South Africa before 1994, but also formally denied by statute. It says the worst part of that is that it was an idea whose absence was part of the ordinariness, the normality, of life under apartheid.

Deane (2005: 8) points out that the Preamble to the Interim Constitution of South Africa, 1993 states that because of apartheid South Africa became a deeply divided society characterised by strife, conflict, untold suffering and injustice and which generated gross violations of human rights. Such violations were predominantly inflicted on the side of Black people of the country. Such violations contained the transgression of humanitarian principles in violent conflicts and a legacy of hatred, fear, guilt and revenge. The Post-amble under National Unity and Reconciliation also echoes the same sentiments (Post-amble to the Interim Constitution of the Republic of South Africa, Act 200 of 1993 :180).

Coleman in Deane (2005: 11) correctly states that Africans could be denied basic rights if the fiction could be maintained that they did not belong in what was then called “white South Africa”, (which was the urban areas), but to “tribal societies”, (which were the rural communities), from which they came to service the “white man’s needs”. Sometimes these rural communities would be termed homelands or bantustans.

Racial segregation and the supremacy of whites were traditionally accepted in South Africa prior to 1948. However in the general election of 1948 Malan officially included the policy of apartheid in the Afrikaner National Party

platform for the first time. In other words, apartheid was formalised as the policy of the South African government. Principally, the purpose of apartheid was the separation of races as separate breeds. Strangely, it was not whites against other whites and to be specific, Afrikaners against the English. It did not only separate whites from Blacks but also Blacks among themselves. Any attempts to reverse that became criminal. For instance, cross-racial marriages were prohibited by the laws of those times (the United Nations Report of the United Nations Commission on the Racial Situation in the Union of South Africa (1952: 139) in (Deane 2005: 15-6).

South Africa's apartheid policy was condemned internationally as unjust, racist and a crime against humanity. In 1973 the General Assembly of the United Nations adopted the text of the International Convention on the Suppression and Punishment of the Crime of Apartheid. The Convention intended to provide a formal legal framework within which member states could apply sanctions to press the South African government to change its policies. However, the Convention only came into force in 1976 (Deane 2005: 7).

Because Blacks were in the majority in South Africa there was a belief that their welfare could only be provided for by a black government, and not by a white one. This suggests that they could never vote for the whites perceived as colonialists and oppressors of blacks. On the Constitution Act, 110 of 1983 Dicey in Bukurura (2005: 10) remarks that, "Parliament was very much aware of the consequences of enacting a bill of rights (could amount to Parliament 'committing suicide')". A bill of rights would provide blacks with voting rights and would therefore vote whites out of political power.

van der Westhuizen in Lindelof (1996: 5) goes on and points out that in 1961 South Africa became a Republic and left the British Commonwealth. The constitutional dispensation remained largely the same. In 1983 a new constitution was adopted, providing for limited political participation by the Coloured and Asian population groups, but still excluding Africans and thus the vast majority of the population. The 1983 Constitution enjoyed very little

political legitimacy. It also did not embody constitutionalism and a constitutional guarantee of fundamental human rights.

The essence of apartheid was the denial of equality, which was necessarily linked to the oppression, exploitation and exclusion from South African society of millions of people and thus to the violation of their human dignity. In addition to its devastating socio-economic effects, it had extremely negative consequences for the legal system. Because it was implemented by state bureaucrats through legal mechanisms, apartheid had to be legally institutionalized. Mostly, proceedings in courts had white officials dominating in every sphere. Blacks only came in as interpreters. This created, correctly or wrongly, a perception that all officials of the courts, including the police, were just mere instruments of the oppressive apartheid system (van der Westhuizen in Lindelof 1996: 5-6).

Resistance against the violation of the Black people's human rights ended in having military formations from various Black people's organisations. The ANC's liberation army was uMkhonto weSizwe and the Pan Africanist Congress of Azania (PAC) was the African People's Liberation Army (APLA). The liberation armies waged a guerilla warfare against the South African state during the apartheid era. van der Westhuizen in Lindelof (1996: 6) attributes the 1976 Students Uprising to the United Democratic Front (UDF). This is not true for the UDF only came into existence on the 20 August 1983 in Cape Town. Political and student's formation operating in the country then were the Black People's Convention (BPC), the South African Student's Organisation (SASO) and the South African Student's Movement (SASM). SASM would be the appropriate organisation that led the 1976 Student's Uprising.

Attempts were made by the South African authorities to curb the resistance against their oppression of the black people. van der Westhuizen in Lindelof (1996: 6) points out that this resulted in numerous, and often draconian security laws being passed, especially during the 1960s. Laws against terrorism and communism came into being and several procedural rights were violated and legal provision for lengthy and often indefinite periods of

detention without trial was made. These resulted in murder, torture and similar abuses by the police. The courts too became entangled in that web of repression, and with a few exceptions, South African courts willingly and sometimes enthusiastically implemented discriminatory and security laws. There are many who were convicted by courts for crimes they never participated in under the umbrella of the common purpose concept, simply because they were at the spots when crimes were committed.

van der Westhuizen in Lindelof (1996: 6) argues that this happened because of the absence of any justiciable constitutional guarantee of fundamental human rights, together with an attitude amongst lawyers that they simply had to mechanically apply technically valid laws, but also because judges and magistrates protected the status quo, either unconsciously as a result of their backgrounds, or because they believed that they should contribute to a fight against an evil onslaught. This suggests that anything that resisted apartheid was relatively regarded as evil by court officials.

Bleak as the situation was in the courts, van der Westhuizen in Lindelof (1996: 6-7) contends that some significant victories were won in the courts with the assistance of human rights organizations. Furthermore, political activists often used court proceedings to publicly express their views, even not accepting the legitimacy of the applicable laws. Before Steve Biko, the BPC President, was murdered in police custody in 1977, he had won numerous cases in court for trumped up charges on having contravened his banning orders. In the very same year he had been called in at the Johannesburg Supreme Court to give evidence in a trial of those involved in the 1976 Soweto Uprising. That evidence articulated his political beliefs and was an inspiration to those who had come to listen in court. Even though his sayings could not be publicised at that time, what he said in court spread throughout South Africa like wild fire.

3.5.3 Human rights violations in South Africa

The human rights culture in South Africa was dominated by the violation of those rights. The major role player in those violations both in the colonial and

the apartheid eras, was the state. Resistance against the colonialist violations of human rights in South Africa was also on the labour front. This also gave the authorities of that time another space to use their oppressive practices. For instance, urban black workers, demanding higher wages and better working conditions, formed their own trade unions and engaged in a rash of strikes throughout the early 1940's. The most important of these trade unions was the African Mineworkers Union (AMWU), which by 1944 claimed a membership of 25, 000. In 1946 AMWU struck for higher wages in the gold mines and succeeded in getting 60,000 men to stop work. Unfortunately, the strike did not bear the desired results for the workers, but was crushed by police actions and left twelve people dead, but it demonstrated the potential strength of organized black workers in challenging the cheap labour system (Deane 2005:13).

Liebenberg (2000: 3) attests that human rights development under the new democratic government in South Africa can only be understood and appreciated against the historical background of colonialism and apartheid. The nature and the impact of colonialism and apartheid have already been elaborated on above. But, they did violate the full spectrum of human rights recognised in the UDHR.

Political rights, which are fundamental in any political democracy, were violated in South Africa by depriving black people of the right to vote and equal participation in political institutions. Blacks were later given such rights under separate development in what was called their homelands. But the same homelands deprived many African people of their South African citizenship rights (Liebenberg: 2000 3).

South Africa also adopted a policy of influx control for blacks into urban areas, thus, the freedom of movement and residence of black people were violated by laws restricting their settlement. It also maintained racially segregated residential areas through legislation such as the Group Areas Act discussed in chapter 2 (Liebenberg 2000: 3-4).

While engaged in controlling and suppressing opposition to apartheid policies, the colonial and apartheid South African governments violated all civil rights and freedoms. These included the right to life, the right against torture and other forms of degrading treatment or punishment, the right to a fair trial and freedom of speech and assembly. These took the form of killings, torture, the severe ill treatment of political prisoners, detentions without trial, the banning of individuals and political organisations, stringent restrictions on the media, and the prohibition of gatherings and demonstrations (Liebenberg 2000: 4).

To counter resistance against apartheid, the South African government intensified, particularly from 1976 onwards, its vicious tactics. It used the law to confer broad powers on the executive, the police and the army. This saw basic civil liberties being eroded on a large scale under the States of Emergency declared during the 1980s. Emergency regulations curtailed even further the limited powers of the courts to prevent and redress violations of human rights. People granted bail by courts could just be re-detained even before such bails were effected (Liebenberg 2000:4).

The issue of detention without trial and courts declaring such detentions invalid can be reflected by the case of *Hurley v Minister of Law and Order* 1985 (4) SA 709. In this particular case Archbishop Dennis Hurley of Durban applied for the release of Gerald P. Kearney who had been arrested in terms of section 29 (1) of the Internal Security Act, 74 of 1982. After having heard arguments from Hurley's and the Minister of Law and Order's Counsels' the Judge declared the detention of Gerald P. Kearney unlawful and of no force and effect. Thus, ordering his immediate release from detention (*Hurley and Another v Minister of Law and Order and Another* 1985 (4) SA 709 D).

The scope of the violations of rights of the black people in South Africa went beyond civil and political rights. There was a pattern that saw to it that the violations reached economic, social and cultural rights of black South Africans. Examples that come to mind and as discussed in Chapter 2, are the Land Act of 1913 and the Trust Act of 1936, which restricted the African population to some 13 % of the total land area of South Africa. Black people

were dispossessed of their land, and forcibly removed to over-crowded reserves that were far from sources of employment and lacked the infrastructure and services for sustainable development (Liebenberg 2000: 4).

The reserves were rife with poverty, disease and malnutrition mainly because there was no source of income in them. They became pools of cheap migrant labour for white owned farms and mines. Dispossession forced successful black farmers to seek employment as farm labourers thereby becoming insecure occupiers of land or labour tenants. The migrant labour system caused untold suffering, breaking up many African families. The men lived in appalling conditions in the mining compounds and slums of the cities, while many women and children were left to eke out a precarious livelihood in the impoverished rural areas (Liebenberg 2000:4-5).

The restrictions that were endured by black workers on their rights were very harsh. Job reservation in the country as a legal practice saw to it that skilled and well-paid jobs were the domain of only white people of the country. In the Western Cape Province government applied what was called a "Coloured labour preference" policy. Under the policy Coloured people, as workers would be the first preference against fellow African workers. This resulted in racial animosity between the two groups. While it was not illegal to form a trade union, the legal status gave cognisance to separate trade unions for Whites and Coloureds including Indians. Anyone organising all workers for trade union activities outside the race card was seen as a political animal and harassed harshly with all the might at the disposal of the state. But in 1979 the law was amended to provide for the recognition of racially separate trade unions, which were initially not permissible, for African workers. But it was only in 1981 that non-racial trade unions were recognised with very limited rights to strike (Liebenberg 2000: 5).

It was a criminal offence to marry across racial lines. Some tried to beat this by being secret lovers, but in many a time they were caught and sent to prison. Others preferred to leave the country and get married elsewhere. Once caught, especially whites preferred to take their lives as their

communities ostracized them. Therefore, the right to associate and marry whoever one wished was made a crime (Liebenberg 2000: 6).

Liebenberg (2000: 6) aptly captures well what was happening in the country when she states that racial discrimination pervaded all aspects of social and public life in South Africa. She adds that most public amenities, including rest rooms, toilets, post offices, elevators, restaurants, railway carriages and buses were racially segregated. An important factor here is that the state saw to it that when and where amenities were availed to blacks, they were of an inferior nature (Liebenberg 2000: 6).

Liebenberg (2000: 6) goes on and states that for the indigenous people of the country, their cultural rights were violated by manipulating them as a system of African customary law. The rights were written in a system that could not be changed or adapted under any circumstances. Rural African women were particularly disadvantaged and an example that can be made here is that of them being made perpetual minors to the males. They could not have immovable properties registered in their names, under quitrent as an example. Theirs was only enjoying usufructory rights when their husbands passed on. Another aspect that is interesting here is the fact that when widowed they would be made minors to their fathers-in-law or one of the brothers-in-law.

All African languages were disregarded in official arenas. English and Afrikaans were the only official languages of the country. Later the imposition of Afrikaans was to ignite the 1976 Student's Uprising in Soweto. Secondary and high schools were forced to use Afrikaans as a medium of instruction for all their lessons in all subjects except English and African languages (Liebenberg 2000: 6).

3.6 Conclusion

This chapter discussed the culture of human rights in South Africa. To contextualise the discussion, the chapter encompassed defining human rights; human rights documents which included the ECHR, ADRDM, ACHR,

ACHPR, and South Africa's Interim and Final constitutions were discussed. The chapter went on and looked at human rights institutions like the Parliament, the TRC, the Constitutional Court, SAHRC, CRLR, LCC and South Africa's international human rights obligations.

In the discussion above, it becomes apparent that before 1994 the governments of both colonial and apartheid eras never subscribed to the culture of human rights for blacks in South Africa. Rather, they were leaders in violating the black's rights. Calls from the international community for them to behave humanly fell on deaf ears. Resistance by blacks against inhuman treatment propelled the governments to be stronger in their resolve.

Those governments were guided by their constitutions, which were very silent about the protection of human rights. South Africa's democratic constitutions both contain a bill of rights and vigorously strive to provide against any violations of human rights.

What also came to light in the discussion is that during the colonial and apartheid eras Parliament ruled supreme and was not "accountable" to the country's constitution. Instead it could amend the constitutions at will like any other legislation. However, in the democratic dispensation, the country's constitution is the supreme law and is very difficult to amend, ignore or disregard in any in dealings of the state or even individuals. The state is also one of the custodians of the country's constitution. The Constitutional Court, which did not exist during the colonial and the apartheid eras, is the main custodian of the constitution in South Africa. It has the authority to declare null and void any law or conduct that does not comply with the spirit of the constitution. This is reflected by the case of the Speaker of the National Assembly v Patricia De Lille.

The democratic era arrived in South Africa with a number of institutions, for supporting constitutional democracy. The institutions include among others the SAHRC.

The human rights culture in South Africa has a notorious history that is more on violating such rights than protecting them. Before democracy dawned, the state was the leader in such violations. The advent of the democratic dispensation therefore came as an emancipator as far as human rights are concerned in South Africa in general, and those of people living and working on farms in particular.

CHAPTER FOUR

FARM EVICTIONS IN THE GREAT KEI LOCAL MUNICIPALITY

4.1 Introduction

The purpose of this chapter is to discuss farm evictions in the Great Kei Local Municipality. The discussion starts by looking at farm evictions during the democracy era in South Africa. Thereafter it discusses the Extension of Security of Tenure Act, No 62 of 1997 (hereinafter referred as ESTA) and the reasons for evictions. It then focuses on the Great Kei Local Municipality having regard to the qualitative research methodology, and human rights under the South African Constitution and the provisions of the ESTA.

The Haga-Haga Case Study is presented, which is an eviction that took place in one of the towns comprising the Great Kei Local Municipality. Responses from questionnaires of the victims of evictions and land rights stakeholders are discussed. This is followed by a conclusion.

4.2 Farm evictions in a democratic South Africa

When democracy came into being in South Africa in 1994, white people were still owners of the bulk of the country's land. Their behaviour still remained as it was under colonialism and apartheid. The eviction of people living and working on farms was still a common phenomenon.

Specifically on the Eastern Cape, the Final Report on the Inquiry into Human Rights Violations in Farming Communities (Final Report 2003: 85) states that many farm workers remain dependent on farmers, not only for employment, but also for delivering of other socio-economic rights and services. It states that while government policies and laws do not appear to have particularly affected farming communities, farm owners remain largely unthreatened.

The Summary of Key Findings from the National Survey (SKFNS : 7) on evictions in South Africa points out that almost 1,7 million people were evicted

from farms in the last 21 years and a total of 3.7 million people were displaced from farms (see Table 1 below). The number of people displaced from farms includes those evicted and others who left out of their own choice. Many of those found to have left of their own choice departed due to difficult circumstances on the farms. However, the latter are not counted as evictees. People were only considered evicted if there was some direct action on the part of the owner or person in charge that forced the farm dwellers to leave the farm against their will.

One of the greatest concerns arising from these figures is the continuation, even an increase, in the number of evictions taking place in post-apartheid South Africa. The SKFNS (7) presents the scale of evictions since 1984 in the following Table:

Table 1
Total number of people displaced and evicted

	Displaced from farms	Evicted from farms
1984 to end 1993	1,832,341	737,114
1994 to end 2004	2,351,086	942,303
Total	4,183,427	1,679,417
Now on other farms	467,808	93,060
Permanently off farms	3,715,619	1,586,357

(SKFNS :7).

The SKFNS (8) reveals that the highest number of evictions occurred during 1984 and 1992, which seems to correspond with periods of severe drought. It states that the next highest number of evictions occurred in the year 2003 when the sectoral determination for agriculture, in terms of the Basic Conditions of Employment Act, came into effect. This legislation sets a minimum wage for farm workers, among others.

SKFNS (10) points out that the evictees are black South Africans. It states that at the time of evictions, 49 % of the evictees were children, raising

questions about the protection of children's rights. Without providing any figures, it mentioned that women are more vulnerable to evictions.

SKFNS (12) further states that women and children are the most vulnerable as they are often treated by land owners and the courts as secondary occupiers, allowed on farms only through their link with a male household member. When a man in a farm dweller household is fired or dies, the farm owner often uses this as a reason to evict the rest of the household.

The SKFNS (10) reveals that almost all evictees have a very low level of education, with 37 % having no education at all. It adds that a shocking 76 % have not gone beyond primary school, leaving them functionally illiterate. The evictees are also extremely poor and even those who worked on the farms earned a pittance.

4.3 The Extension of Security of Tenure Act, 62 of 1997 (ESTA)

To protect the rights of those living and working on farms, the government promulgated the Extension of Security of Tenure Act, 62 of 1997 (ESTA).

Rembe (2001: 27-8) summarises the following implications arising as a result of the introduction of the ESTA:

- It gives occupiers who lived on someone else's land on or after 04 February 1997 with the permission of the owner, a secure legal right to live and use that land. An owner cannot cancel or change these rights without the occupier's consent unless there is a good reason for doing so, and until the occupiers have had a chance to answer any allegations made against them.
- It provides ways in which occupiers can strengthen these rights with financial help from the state so that they can have long term security of tenure and in some cases, become owners of the land.
- It protects occupiers against unfair or arbitrary evictions, but provides for legal evictions under certain circumstances. An eviction can only take place if a court orders this. An application to court for an eviction order can

only be made once the right to live on and use land has been fairly ended. In most cases where the occupier has done nothing wrong, the court will not grant an eviction order unless there is another place where the occupier can go to live.

- If owners force occupiers off the land or deprive them of the use of the land or water against their will, the former commit a criminal offence and can be jailed or fined.
- Occupiers have the right to receive visitors, the right to family life, and not to be deprived of access to water, health, and education services.
- It gives all the people the right to visit and maintain family graves in rural and peri-urban areas.
- Women enjoy the same rights as men, as women are also occupiers.
- Special rights are given to long-term occupiers (those who are 60 years and who have lived on the land for 10 years or longer). These special rights are also given to people who were employed by the owner and became disabled, if they have lived on the land for 10 years or longer. These occupiers will be able to live on the land for the rest of their lives, without having to work, unless they do something wrong.
- The ESTA provides ways to resolve disputes over land rights through mediation, arbitration, or the courts.

Consequently, Rembe (2001:28) adds that the ESTA provides protection for owners by stipulating that occupiers may not harm or threaten other people on the land, damage property or help others to unlawfully establish dwellings (sections 6 (3) (a) and (b)). The Act also regulates day to day relationship between owners and occupiers (sections 6 and 7); and provides for legal and fair evictions under certain circumstances (section 8), (The Extension of Security of Tenure Act, 62 of 1997).

However, Rembe (2001: 28) also correctly argues that the enactment of ESTA has not stopped illegal evictions of farm workers by farm owners. Her study revealed that people are evicted from the farms illegally without adherence to measures stipulated in ESTA. She further mentions that

according to statistics and information provided by NGOs and the Department of Land Affairs, from October 1998 to March 2000 there were over 64 cases of illegal eviction (actual and threats) in the Eastern Cape. Six hundred and forty nine people (172 men, 182 women and 295 children) were affected by those evictions. Close to 73 % of the people who were affected by evictions had lived on the farms for 10 years and above. However, according to the stipulations under ESTA, only 27 % qualified as long-term occupiers. Twenty six percent had lived on the farms for less than ten years.

4.4 Reasons for evictions

Rembe (2001:28) mentions that close to 60 % of evictions were due to termination of employment without adhering to procedures stipulated in the Labour Relations Act. Most farmers terminate employment of farm workers without notice and with such a termination, employees are expected to vacate the premises. Some of the employees have lived on farms for ages, at times for generations and have no other place to live. They know no other life style but that on the farm.

Rembe (2001: 28) aptly captures the plight of people living and working on farms. She mentions that on termination, they are deprived of protection of the law due to prolonged administrative and legal processes. For an example she observed the requirement of notice period of one month; the time spent at eviction hearing (usually two months); time to wait for the court decision (one month); and the last stages when the matter goes before the Land Claims Court for review.

Other than labour disputes, other causes of evictions from the farms include downsizing, mechanisation, a new owner taking occupation and the land being used for different purposes, for example, game farming. Although ESTA stipulates that the change of ownership should not prejudice the occupier's right of residence, Rembe (2001:30) indicates that there has been an increase in evictions with changes of ownership.

Rembe (2001: 30) observes that in addition to threatened and actual evictions, change of ownership of farms and labour disputes have also resulted in constructive evictions. She explains that constructive evictions result when the owner ensures that he/she denies essential facilities to occupiers who will eventually decide to leave because of not being able to endure hardships caused by lack of those facilities. Farm owners cut off water; deny grazing land or demand exorbitant grazing fees from farm workers who own livestock on the farm.

In certain parts of the Eastern Cape it has been common practice for farm workers to have access to grazing rights as part of residential rights on the land (Rembe 2001: 30). This is why farm workers with livestock decide to move out of the farm or sell their livestock. She makes reference to other cases where farm workers raised funds from their own salaries and installed water pipes near their houses. The farmer sold the farm but wanted to get rid of the farm workers before the new owner took over. He destroyed their pipes and blocked the way to the dam so that farm workers would not be able to get access to water. Having no access to water for some time, most of the workers decided to vacate the farm and moved out without alternative accommodation. She also makes mention of other incidences where families have been served with eviction notices leaving out those members who qualify as long term occupiers. Farm owners know that the long-term occupiers being old and sometimes sick will be compelled to leave with the rest of the family since they require care.

The SKFNS (14) compliments Rembe's sentiments and states that over two thirds of evictions were work-related, whether the affected person was working on the farm or not. It echoes more or less the same views in that the number of reasons reported, ranged from farms closing down to farm workers being dismissed or passing away. In such cases, a large number of people, mostly women and children, are evicted as a result of the main breadwinner passing away. At a time of loss when they need most support, these farm dwellers also lose their homes and source of income.

Other reasons for evictions include changes in land use, conflicts over access to services, disputes over labour and farmers simply not wanting people living on the farm any more (SKFNS : 14).

4.5 The Great Kei Local Municipality

In chapter 1 it was mentioned that within the Department of Land Affairs (DLA) in the Eastern Cape, the Great Kei Local Municipality (GKLM) is referred to as the “hot spot” as far as illegal farm evictions are concerned. It reported that between February and April 2006 out of the 12 eviction cases reported at the Amathole District Level Delivery Office (ADLDO) of the DLA from eight municipalities, six cases were from the GKLM. In terms of land reform issues, the GKLM falls under the jurisdiction of the ADLDO. Mention may also be made that out of the total of 54 people affected by these evictions, 33 were from the GKLM.

The GKLM is predominantly a farming community, with little or no ongoing industrial concerns. The small farming towns that form the GKLM include Cintsa, Cintsa East, Haga Haga, Kei Mouth, Komgha, and Morgans Bay. Obviously then, farming is one of the major employment providers in the area, and farm owners are predominantly whites. There are very few “dots” of emerging (Black) farmers scattered in the area. However, their attitudes towards eviction of people living and working on farms are not different between the two groups of farm owners.

The Municipal Profiles (MPs 2006: 4) provides the industry statistics for the GKLM in the 2001 Census as follows:

Table 2
Industry statistics for the GKLM

Description	2001
Agric relate work	1397
Mining, quarrying	28
Manufacturing	217
Elec, gas, water	16
Construction	350
Wholesale, Retail	683
Transport, Comm	104
Business Services	299
Community Services	1437
Private Household	
Undetermined	38445
Extra Territ Orgs	
Rep Foreign Gov	

(Municipal Profiles 2006: 4)

Because of the figure 1397 associated with agriculture related work in Table 2 above, it becomes obvious that agriculture is the employment leader in the area. This also confirms that the area is predominantly a farming community. Tale 2 also reflects that other employment concerns like mining and manufacturing contribute little in creating employment in the GKLM. Perhaps it could be said that community services with its 1437 figure outnumber agriculture-related work. But community services also include volunteers and people sentenced by courts to do such work. Such groups do not get any remuneration for the work they do. Surely the figure 38 445 for undetermined work is for a combination of many insignificant employment providers which cannot be compared with agriculture-related work. The figure could perhaps include accommodation. There are very few hotels and guesthouses in the area and they employ a very limited number of people.

Sifting through a pile of documents at the Deeds Office in King William's Town, the researcher discovered that as at 18 December 2006 out of 918 farming properties of the Great Kei Local Municipalities, 65 were registered in the names of black people. The information also revealed that 371 farming properties were registered in white individual's names; 325 were registered in white owned trusts and companies (of which 18 bore African names); 47 were state properties; 26 were owned by parastatal institutions; and 148 had no names.

On the other hand, people living and working on farms in the GKLM are predominantly black and landless. Most of them have never been to school. The MPs (2006: 2) portrays educational statistics (grouped) for the GKLM in the 2001 Census as follows:

Table 3
Educational statistics (grouped) for the GKLM

Description	2001
No schooling	8198
Some primary	4709
Complete primary	1674
Some secondary	6078
Std/Grade 12	2369
Higher	909

(Municipal Profiles 2006: 2)

There is high unemployment and wages are low. They rely for their livelihood on employment provided to them by the farmers. The Municipal Profiles (2006: 3) reflects households income statistics for the GKLM in the 2001 Census as follows:

Table 4
Household income statistics for the GKLM

Description	2001
No income	3379
R1 – R4 800	1209
R4 801 – R 9 600	3173
R8 601 – R19 200	1877
R19 201 – R38 400	815
R38 401 – R 76 800	495
R76 801 - R153 600	318
R153 601 – R307 200	137
R307 201 – R614 400	32
R614 401 – R1 228 800	22
R1 228 801 – R2 457 600	28
R2 457 601, more	8

(Municipal Profiles 2006: 3)

The environment in which people living and working on farms makes them subservient to their employers because of scarcity of employment and poverty in their areas and poverty.

The Labour Force Survey (March 2007: 18) gives the average national wages for workers (employers, employees and self-employed) aged between 15-65 by monthly income and sector as reflected in Table 5 below:

Table 5
Monthly income for workers aged 15-65

Monthly income	Formal	Informal	Domestic	Total
Total	9 0592	2 592	936	12 648
None	25	361	*	394
R1 – R500	270	687	295	1 263
R5001 (sic.)- R1000	972	593	392	1 972
R1 001- R2 500	2 670	584	221	3 505
R2 501- R8 000	3 126	248	*	3 389
R8 000+	1 365	44	*	1 409
Don't know/refused	568	64	17	651
Unspecified	31	11	*	65

* For all values of 10 000 or lower the sample size is too small for the reliable estimates.

Totals includes other and unspecified population groups and sex. Due to rounding of numbers do not necessarily add up to totals.

(Labour Force Survey, March 2007: 18).

4.5.1 The Qualitative Research Method

The case study method is an offshoot of the qualitative research method. Therefore, to explain the case study method contextually, it is also important to begin by explaining what the qualitative research method is. Berg (2004: 7) explains that qualitative research properly seeks answers to questions by examining various social settings and the individuals who inhabit these settings. This could be a community, a tribe or a specific school, for example. He adds that qualitative researchers are most interested in how humans arrange themselves and their settings and how inhabitants of these settings make sense of their surroundings through symbols, rituals, social structures and social roles. The interest could be around wedding ceremonies, the attire people wear, their religious practices or their hereditary practices. This could be bluntly explained as their way of life.

The QSSRM (No date 1-12) discusses 12 types of qualitative research methodologies, including the case study. For the purposes of this study it will only be the case study method that will be pursued on in this discussion.

4.5.1.1 The Case Study Method

Gwarinda (2006) argues that the case study method carries all the characteristics of the qualitative research paradigm. The QSSRM (5-6) states that this method occurs when all that one has is information about a unique case, and one wants to generalise about all such cases. It could be a case study of an organisation or a community. Almost all case studies interviewees are allowed to express themselves in their own words.

With case studies, the idea is to find a subject so average, so typical, so much like everyone else, that he/she seems to reflect the whole universe of other subjects around him/her (QSSRM: 6). For the purposes of looking at illegal farm evictions in the Eastern Cape, illegal farm evictions at the GKLM could be taken as an example. Therefore, illegal evictions at the GKLM would be reflective of the nature of illegal farm evictions in the Eastern Cape.

Hamel, Dufour, and Fortin (1993); Merriam (2001) and Yin (1998) in Berg (2004: 251) state that the case study methods involve systematically gathering enough information about a particular person, social setting, event, or group to permit the researcher to effectively understand how the subject operates or functions. They add that the case study is not actually a data-gathering technique but a methodological approach that incorporates a number of data-gathering measures.

Berg (2004: 252 –261) discusses the individual case study, exploratory case studies, explanatory case studies, descriptive case studies, case studies of organisations and case studies of communities. It is only the case study of communities that is relevant for this research, which is discussed hereunder.

4.5.1.1.1 Case studies of communities

In his definition of a community Berg (2004: 260-1) refers to it as some geographical delineated unit within a larger society. He explains that such a community is small enough to permit considerable cultural (or subcultural) homogeneity, diffuse interactions and relationships between members, and produce a social identification by its members. People living and working on farms in the GKLM could be an example.

Berg (2004: 261) adds that the literal application of the term community is somewhat fluid. But, it does not actually include the entire nation, a state, or even a large city. It would, however, include a particular neighbourhood within a city. The GKLM of the Eastern Cape is a relatively small area composed of small farming towns like Haga-Haga, Komgha and Kei Mouth. But the area has a community of farmers and people living and working on farms that have their own identities.

Berg (2004: 261) further states that like with other variations of case studies, community case studies may be very general in their focus, offering approximately equal weight in all of the various aspects of community life. He also explains that community case studies may specifically focus on some particular aspect of the community or even some phenomenon that occurs within that community. In this instance, farm evictions could be described as being that particular phenomenon.

4.5.2 Human rights under the South African Constitution and the ESTA

Among others, the South African Constitution guarantees for all South Africans the following human rights: equality; human dignity; life; freedom and security of the person; privacy; freedom of religion, belief and opinion and of expression; freedom of association; and freedom of movement and residence (Sections 9 to 21 of the South African Constitution Act, 108 of 1996).

However, all these rights are subject to limitations. These limitations require that when people enjoy their rights, they do not infringe the rights of others. Specifically on evictions, Section 26 (3) of the South African Constitution

states that: “No one may be evicted from their home, or have their home demolished, without an order of court made after considering all relevant circumstances. No legislation may permit arbitrary evictions”. The spirit of this section can be described as noble. However, illegal evictions and farm evictions, so prevalent in South Africa, could indicate that people either ignore or are oblivious of the above cited constitutional provision.

Section 5 of ESTA echoes verbatim the spirit of Section 36 of the South African Constitution. It states that subject to limitations which are reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, an occupier, an owner and a person in charge shall have the right to human dignity, freedom and security of the person; privacy; freedom of religion, belief and opinion and of expression; freedom of association; and freedom of movement. The Section ends by stating that all must have due regard to the Constitution and ESTA.

4.5.3 The Haga-Haga Case Study

The case study under investigation is at Valencia Farm in Haga-Haga, one of the small towns falling under the GKLM. According to information received at the ADLDO, the case was reported in June 2006 by a Ward Councillor for the GKLM. People living and working on the farm, the victims, are four families. The first family has eight adult persons and eight minor children occupying two dwellings. The family head started living and working on the farm wayback in 1949 with his wife. In that marriage they were blessed with two sons, one now deceased, and two daughters. They have 8 grandchildren and two daughters-in-law. The information states that all the people are domiciled on the farm and have been so domiciled either on the date of their arrival on the farm or of their marriage or their respective births (the latest being six years before the assumption of ownership of the farm by the current farm owner). The family head and his wife have reached the age of 60 and have resided on the farm for more than ten years.

The second family has nine members with six adults, four females and two males, and three minor children. The family head is a 78 years old female

who has been resident on the farm for more than 10 years. The family head and her sister in her household, are sisters to the family head of the first family. They also arrived at the farm in 1949. Her son and her daughter have been staying with her all along. The rest are the grandchildren to the family head.

The third family is a ten-member household with two adult males, six female adults and two minor children. The family head and his wife - both more than sixty years old - arrived at the farm in 1949 and stayed there with their five children. Their three grandchildren also stay with them.

The fourth family has four female adults, one male adult and two minor children. The household is female headed and the male and two females are the children of the family head. The remainder are the children of the male. The family head arrived and worked at the farm with her children during the 1970's.

The consent to work and live on the farm was given verbally by a previous owner of the farm. They had indicated that this was done a long time ago and some of them were born on the farm. The current farm owner is listed as the one pursuing a constructive eviction on the victims and has ceased their grazing rights, number of cattle, arable allotment, access to water and burial rights. The major cause for the problems of the victims on the farm is the change of ownership of the farm.

An ADLDO official visited the victims on the 05 July 2006. Attempts were made, though unsuccessful, to negotiate with the farm owner, in terms of ESTA, of the rights of those he was constructively evicting from his farm. Among other issues his activities were in contravention of ESTA, the South African constitution, and the requirement for alternative accommodation as ESTA stipulates.

After failing to bring the farmer to the table, the case was referred to the University of Fort Hare Legal Aid Clinic (UFHLAC). It is part of the Nelson R

Mandela School of Law and does not charge any fees for the services it renders. An attorney within the UFHLAC was tasked to handle the case and he visited the victims on the 11 July 2006. Unfortunately, even before tangible strides could be made in the case, the attorney got another post with the South African Human Rights Commission (SAHRC). Among the mandate of the latter is the power to investigate complaints of violations of human rights and to seek appropriate relief thereof. Illegal eviction of people living and working on farms falls squarely under violations of human rights.

When the attorney was still employed by the SAHRC, he asked the UFLAC to transfer the case to the SAHRC. Once that was done he handled the case himself. He personally visited the victims of the constructive eviction at Valencia farm to see for himself what was happening. The SAHRC preferred to take the matter to court and, at the time of writing the case was being handled by the Land Claims Court (LCC).

The researcher visited Valencia Farm at Haga-Haga 02 August 2006 and interviewed the victims on the violation of their human rights there. The elderly victims corroborated the information at the ADLDO by claiming to have arrived at the farm while they were still young and their children were born on the farm. They impressed upon the researcher that things started going wrong when the new owner of the farm came in. Initially, there were no problems at all with successive previous farm owners. The bone of contention by the victims is that their rights, which are protected by ESTA and the Constitution, have been violated in that the farmer assigned one of his tractor drivers to plough on top of their parent's graves. He later apologised for that calling it a miscommunication with the tractor driver. He further instructed his driver to plough around the huts in which they are staying. As it now stands, their places of abode are now in the middle of a ploughing field. That ploughing has taken place even on the land that was in the past used by the victims for their livelihood. They are now not allowed to plough any land on the farm.

The farmer has ploughed Kikuyu grass for his dairy cattle around the victims' huts. He uses sprinkling irrigation to provide water for the grass. When the

irrigation system does its work it includes the huts in that process. Because the huts are mud huts, the impact of water has proved to be dangerous as chunks of mud fall down from the walls of the huts. The huts are therefore steadily crumbling down.

The farm owner forced them to take their cattle out of the farm, thus denying them grazing rights they had previously enjoyed on the farm. This has resulted in some requesting other people in close by villages to keep their cattle but not without a price. Others have opted to sell their cattle, which they would not wished to do.

The farm owner told them that he does not want children on his farm. Because there is no school on the farm, children of farm workers attend school elsewhere. However, the farmer does not want the children to rejoin the parents on the farm during school holidays. In addition, the farmer refused them to build a hut on the farm for a boy going to initiation school. As a result, the boy had to go to the initiation school elsewhere and not on the farm.

The farmer demolished their cattle kraals and removed the fences surrounding their homes. That in effect would suggest that they would not be able to hold traditional ceremonies at the farm because of the non-existence of the kraals. The safety of their homes has now been compromised because their homes are now no longer fenced.

The woes of the victims have been compounded by the fact that the farmer has put electric fence around the place where they get their water. Because of that they have no access to water on the farm, they have to fetch it from a neighbouring farm.

At the farm, the gate providing entry to the homes of the victims has been locked with a padlock. To reach their homes, the victims use an open space in the gate, which enables them to move in and out of the farm. Without the opening they would either be locked inside or outside the farm.

The farmer has tried to induce them, (but not forcing them) to go and live in a village nearby called Sotho. The farm workers have no intention to do that. They claim that moving to a village or a township would be problematic for them, and would amount to a change of lifestyle. Living on the farm is better than any other lifestyle.

Ultimately, the families with the assistance of their lawyer contended that the activities of the farm owner:

- Violated their rights to dignity, personal freedom and security, and freedom of movement;
- Violated their rights to family life within the context of their cultural background;
- Violated their right not to be denied access to water;
- Violated their rights to security of tenure;
- Violated their rights to visit and maintain their family graves; and
- Imposed an unfair and arbitrary eviction upon them.

4.5.3.1 Research questionnaires

To have a deeper and a broader view on the dynamics surrounding the eviction of people living and working on farms, questionnaires were developed as instruments to assist in that process. There were two sets of questionnaires that were developed, one for the people living and working on farms, and the other for stakeholders participating in the land rights domain in the GKLM.

Mention must be made in advance here that South African farmers as key role players in illegal farm evictions were approached at different stages of the research and different responses were obtained from them. For instance, efforts to link up with the farm owner in our case study were fruitless. He was always not available at his farm and cellphone. Another white farmer working for a church organisation never returned the questionnaire he was provided. The common feedback from his colleague was always that he had forgotten it at his farm. The Eastern Cape office of Agriculture South Africa (AgriSA) in

Port Elizabeth, a national organisation of white farmers in South Africa, was also not helpful. Their response was irrelevant to the information requested from them. On the other hand, the Eastern Cape office of the National African Farmers' Union (NAFU) also in Port Elizabeth was very co-operative and assisted the researcher with valuable information for this study.

The Final Report (2003: 1) mentions that during the inquiry into human rights violations in farming communities, Agri SA, was defensive in its approach and clearly felt victimised by the process. Agri SA contended that where violations do occur, they can be attributed to the lack of enforcement. They further argued that those who are responsible for violations are not necessarily farm owners or farmers. They referred to farmers that do commit violations as "bad apples".

Agri EC told the inquiry that they advise their members that when land subject to ESTA is sold, the change in ownership does not affect the rights and duties enjoyed by the farm dwellers. Where it has come to Agri EC's attention that former farm workers have been evicted subsequent to the sale of land to the EC Parks Board, they have intervened and the situation was rectified (Final Report 2003:87).

Compared to other provinces at the inquiry, Agri EC was relatively silent regarding ESTA and their attitude towards it. The only problem mentioned by Agri EC pertained to long-term occupiers and were concerned that the legislation places duties on them to provide housing for long-term occupiers and that would mean that they would have to build housing on the farm. NGOs report that the attitude they encounter on the ground from farmers is that ESTA is not constitutional and places an unfair burden on farmers to comply with the responsibilities expected of them in terms of the Act (Final Report 2003: 87-8).

Kobus Laubsher, General Manager of Grain South Africa when questioned whether evictions happen out of economic necessity or deliberate "ethnic cleansing", replied that, "There may be cases where it has happened on racial

grounds, but for the major part, evictions are for economic reasons” (Barron, Eastern Cape Agri, December 2007). Key issues that have to be noted on Laubscher’s concession are that people’s rights are violated because of racial and economic reasons.

To another question Laubscher replied that, “A farmer cannot be expected to take sole responsibility for the well-being of people if he cannot afford to have them living on his farm. All these new laws giving workers the right to stay on, etcetera, adds (sic) risk to a farming environment and sometimes it becomes ungovernable” (Barron, Eastern Cape Agri, December 2007). This would suggest that there is a sense of mistrust from the side of some farmers that exists on persons living on their farms.

4.5.3.1.1 Questionnaires for people living and working on farms

The questionnaires for people living and working on farms were sent to three people who in the GKLM have been affected by evictions in a number of ways. The first one is in the case study for this research; the second one was saved from eviction from a farm by the LCC and the third one had a relative who qualifies under ESTA to be buried on the farm but was denied such a right by the person in charge of the farm. However, after the intervention of the ADLDO the burial to take place on the farm.

The three were two African males and an African female who had lived on farms in the GKLM for more than 20 years. One was above 40 years of age and the others were between 31 and 40 years old. The questionnaire had 18 questions and they received them at different times and places and the confidentiality of their responses was highlighted.

Question 1

In their responses they all agreed that the farm owners in the GKLM never heeded the calls made in the 2001 Tenure Conference in Durban and the 2005 Land Summit in Johannesburg for the cessation of illegal farm evictions in South Africa. It was apparent that people living and working on farms have a single attitude towards farm owners, in this particular instance, a negative

attitude towards farm owners. Therefore, relations between those affected by illegal farm evictions and perpetrators of those evictions cannot be described as healthy.

Question 2

The respondents stated that they know their rights as farm workers; and they receive information about their rights. All respondents agreed that they have radios and two have TV sets. They all said they are aware of the resolutions taken at the 2001 Tenure Conference and the 2005 Land Summit. The researcher was able to establish all three can read and write in their own languages.

The 2001 Tenure Conference in Durban and the 2005 Land Summit were widely debated on National Television and the radio. Those debates might have informed them about the events and scope of their rights. Because they can read and write in their own languages, they could have read information on rights of people living and working on farms from publications of the Department of Land Affairs and the print media that is available in isiXhosa in the Eastern Cape, iZimvo, isiGidimi and iLizwi.

The Landless People's Movement (LPM) which is operational in the Eastern Cape attended both the events and they could have given them feedback. The LPM is a pressure group in South Africa championing, among others, the rights of the landless and those living and working on farms, who are predominantly black people.

All the interviewees acknowledged that they know their rights as farm workers and receive information about them. Most probably this is related to their wages and other related issues because in question 12 they all strongly agreed that people living and working on farms are not aware of their rights under ESTA. A concession has to be made here that what the interviewees said is contradictory. But their victimisation suggests that they do not really know their rights.

Question 3

On the prevalence of farm evictions of people living and working on farms in the GKLM they indicated that there were families related to them whom they know were illegally evicted. On the evictees known to them, two said the numbers range between six to ten families and the other said they ranged between zero and five. This confirms the fact that when an eviction takes place on farms, whether legal or illegal, it affects the whole family.

Question 4

All the respondents agreed that the major cause of illegal farm evictions is victimisation of people living and working on farms. They said the evictees were never given notice to vacate the farms; they were not given their remuneration benefits; and were never given alternative accommodation. If all this is to be believed, it is tantamount to victimisation of people living and working on farms.

ESTA is very clear about the idea of alternative accommodation when a legal eviction is taking place. The denial of such accommodation would therefore suggest that a particular eviction is illegal.

Question 5

Respondents admitted that they knew families/persons with children that had been evicted. Three of them indicated that the children were between the ages of six and ten. The third respondent added that there were also children who were between the ages of 11 and 15.

Without any doubt illegal farm evictions are brutal in nature and affect people who are very vulnerable, in this instance, children. The trauma of an eviction has the potential of affecting the young children for the rest of their lives. It could affect them mentally and physically, and perhaps develop in them a sense of grudge or hatred against those having evicted them.

Questions 6 and 7

All the respondents agreed that they know people living and working on farms who were denied burial rights and land use in the GKLM. As indicated above they were identified for this study because they were affected by illegal farm evictions in differing ways. One of the interviewees has a relative that was denied burial rights. That situation was only saved by the intervention of the ADLDO. The family of the other was asked to stop ploughing their fields on the farm for their livelihood and forced to take their cattle off the farm. The family also reported the matter to the ADLDO even though the matter still has to be resolved. In a certain way, this indicates that there is a level of consciousness of their rights to some of the people living and working on farms. Otherwise, the matter could not have been brought to the attention of the authorities. Perhaps, success of this particular case might provide a useful precedent to them and others about their rights.

Questions 8 and 9

From the questionnaires for people living and working on farms indicators are that farm evictions affect families with the elderly, and not necessarily individuals. Like under question 3 and 5 above illegal farm evictions affect families with another vulnerable group, the elderly. What normally happens here is that once the family head reaches the retirement age, he or she becomes less productive as a worker or even useless to the farm owner. Then the farmer decides to release him/her and requires that he/she moves out of the farm with all the family. Sometimes, this could happen after the death of the family head. The elderly widow and her family must leave the farm.

For the remainder of the **questions**, that is **10 -18**, they were asked as to whether they agreed or disagreed to certain statements. They had to strongly disagree, disagree, be neutral, agree or strongly agree.

Question 10

In answering question 10, all of them strongly agreed that landowners evicting people living and working on farms in the GKLM did not have the interests of

their evictees at heart. Once more the question of a negative attitude arises here. The responses of the three respondents are indicative that they do not trust the landowners as a result of their behaviour, which is illegal eviction. If they really had the interests of their evictees at heart, naturally, they would have acted empathetically towards them.

Question 11

On the question whether Presiding Officers do not have an understanding of the ESTA in terms of evictions in the GKLM one was neutral, another agreed and the last one disagreed. Regarding the one that was neutral, the situation could be that the case had not reached the stage where the courts were to be involved. Perhaps, s/he had not witnessed a particular illegal eviction case that had been to the courts.

The one that had agreed could have felt prejudiced by the inferior court and that is why the case ended up in the LCC, where they won the case. Furthermore, there is a perception that presiding officers in small farming towns are friends to the farmers and whenever they preside over cases involving such farmers and people living and working on farms, verdicts always favour farmers.

The respondent that disagreed could have been saved from an illegal farm eviction by the intervention of an inferior court. Even if that experience was not personal, s/he could have witnessed a situation where the magistrate's court saved people living and working on farms from an illegal eviction. This could dispel the view that presiding officers collude with farmers against people living and working on farms in cases of illegal farm evictions.

Question 12

All strongly agreed that people living and working on farms are not aware of their rights under ESTA. The belief about the lack of knowledge of their rights under ESTA is a challenge to all those purporting to be championing the rights of people living and working on farms. This challenge encompasses NGOs, all spheres of government, and agricultural interest groups. On the 03 November

2007 the Department of Land Affairs launched a Land Rights Awareness Campaign in Grahamstown. Hopefully, this would be the beginning of a process that would educate people living and working on farms on their rights under ESTA. In the same vein it would be good when people living and working on farms know their rights because they would stand up for them and jealously guard them against all odds.

Question 13

Question 13 which is related whether farm owners in the GKLM are aware of their obligations under ESTA. One respondent agreed and two strongly agreed. This assumption could be influenced by the fact that most farm owners are relatively rich or educated. As a result of their wealth or education they have information resource at their disposal. Their wealth also enables them to get quality legal expertise. They also belong to influential and powerful agricultural organisations that keep them abreast of developments on agriculture and land use issues.

Question 14

All respondents strongly agreed with the statement that since the advent of freedom in 1994 eviction of people living and working on farms in the GKLM has worsened. Most probably this view could be influenced by the fact that all of them were affected by illegal farm evictions. Other than themselves, they could have witnessed others being illegally evicted from other farms. Earlier on in question 3 they indicated that there were other families that they know that were illegally evicted. Additionally, is the fact that in the ADLDO the GKLM is regarded as a “hot spot” as far as illegal farm evictions are concerned. In other words, illegal farm evictions abound in the area.

Question 15

Question 15 was on whether the eviction of people living and working on farms in the GKLM has subsided since the advent of freedom in 1994. Three strongly disagreed. Under 4.5 above, the manner in which illegal farm evictions occur in the GKLM was stated. Therefore, any argument that would

support the statement against the statistics contained therein, would sound hollow.

Question 16 and 17

Questions 16 and 17 were on whether “The promulgation of ESTA has curbed the prevalence of the eviction of people living and working on farms in the GKLM”. One agreed, another strongly disagreed, and the third one disagreed.

Despite the variety of views expressed by the respondents on ESTA having curbed illegal farm evictions, the reality of things is that it has not done so. Again the statistics provided in 4.5 above would disprove any notion that ESTA has curbed the prevalence of the eviction of people living and working on farms.

Lastly, on the question whether “The promulgation of ESTA has not curbed the prevalence of the eviction of people living and working on farms in the GKLM”, one respondent disagreed, another strongly agreed and the last one agreed. In view of the fact that the three interviewees had been affected by illegal farm evictions, there was a belief that they could see things the same way. Then the question on the one that disagrees would be on what basis is s/he making that assertion? Again the statistics of 4.5 would be used to argue against such a disagreement.

Question 18

Respondents did not add any remarks as requested by 18.

Table 6 hereunder with abridged questions displays the manner of response:

Table 6
Questions and responses from victims

Question	Response category									
	Y	No	N R	S D	D	N	A	SA	OR	
1. Heeding of calls for the cessation of farm evictions in the GKLM?	3									
2.Disemination of information.	3	1								
(a) Do you know your rights?	3									
(b) Do you get information about your rights?	3									
© Do you have a TV set?	2									
(d) Do you have a radio?	3									
(e)Are you aware of the resolutions of the 2001 Tenure Conference and the 2005 Land Summit?	3									
3.Prevalence of farm evictions in the GKLM.	3									
(a) Do you know anybody evicted in the GKLM?	3									
(b) Was the person/family related to you?										
(c) How many evictions do you know?	2									
(i) 0 – 5	1									
(ii) 6 – 10										
4.Victimisation of evictees in the GKLM.		3								
(a) Do you agree that victimisation major cause of farm evictions?										
(b) Were evictees given notices to vacate?										3
(c) Were they given their remuneration benefits?										
(d) Were they provided alternative accommodation?		3								
5.Eviction of children.	3									
(a) Do you know a family/person with children that have been evicted?	3									
(b) Children's ages?	1									
(i) 6 – 10										
(ii) 11- 15										
6.Do you know people denied burial rights in the GKLM?	3									
7.Do you know people denied land usage in the GKLM?	3									
8. Were evictees families?	3									
9. Were there the elderly among the evictees?	3									
10. Evictors in GKLM not having interests of evictees at heart?								3		
11. Presiding officers not having an understanding of the ESTA on eviction.					1	1	1			
12. Evictees not aware of their rights in terms of the ESTA.							3			
13. Farm owners aware of their obligations under the ESTA.							1	2		
14. Since 1994 evictions in the GKLM have worsened.								3		
15. Since 1994 evictions in the GKLM have subsided.				3						
16. ESTA has curbed prevalence of evictions in the GKLM.				1	1		1			
17. ESTA has not curbed prevalence of evictions in the GKLM.							1	1		

Key: Y = Yes; No = No; No Reply = NR; SD = Strongly Disagree; D = Disagree; N = Neutral; A = Agree; SA = Strongly Agree; OR= Other Response.

4.5.3.1.2 Questionnaires for land rights stakeholders

The legal fraternity including law enforcement agencies, agriculturally based non-governmental organisations (NGOs), Organised Agriculture for blacks and whites (including the farm owner in this case study), church organisations as stakeholders participating in the land rights domain were canvassed to provide answers to questions pertinent to this study. The total number of stakeholders canvassed is 14.

While a number of responses was received from them, however others, despite several reminders, preferred to ignore the request. At the time of writing 8 had responded. To a certain extent, that number seems to be representative of all stakeholders around illegal farm evictions. This is because there were responses received from the judiciary and the legal fraternity even though not everybody responded. The story is the same with organised agriculture, farm worker organisations, structures of government and NGOs.

Mention must be made here that one respondent preferred to refer the researcher to another institution, which is not relevant for the current study and never attended to the questionnaire. This was accepted as a polite refusal to participate in the exercise.

Question 1

On the first question on farmers heeding the calls for the cessation of farm evictions in South Africa by the 2001 Tenure Conference in Durban and the 2005 Land Summit in Johannesburg three of those who responded did not answer the question. One agreed that the calls were heeded and three said the calls were never heeded. As land rights stakeholders that handle land rights with differing objectives, their responses were expected not to always coincide. Others would agree and others would disagree. The responses to the first question is the evidence of the composition of the stakeholders. Perhaps, the argument could be that the responses tended to be biased towards their objectives.

Question 2

On the question about the prevalence of illegal farm evictions in the GKLM one of the two respondents did not answer. When questioned the respondent stated that he does not know, even though in the eyes of the researcher, he is placed in a position to know. For instance, illegal farm evictions that have been referred to the inferior courts in the GKLM have, cannot be disposed without his knowledge. However, the researcher accepted the answer, even though the researcher had reservations about the response. The four who said “yes” confirmed what is on record and the two who said “no” were regarded as being on denial. The second remarked that this was not necessarily so.

Question 3

Considering the low levels of education and their non-ability to get employment elsewhere other than working on the farms, it would be understandable to have people citing victimisation as the major cause of illegal farm evictions. Three responded to the questionnaire as such. Added to this, is that, people living and working on farms have become subservient to their employers because they also accept that it would be difficult to get employment elsewhere. The farming environment is also their lifestyle and they have a passion for it. The two respondents who did not give a response to the question perhaps are oblivious of what is happening around them. The one who disagreed could not be asked as to why he had given such an answer and cannot be blamed for that since he saw it that way. However, the probability here is that this respondent could be living in denial of what is happening in his/her locality. The reason for that is because when unequal “opponents” are pitted together, the weaker one is bound to be dominated by the stronger one.

Question 4, 5, 6, 7 and 8

Questions 4, 5, 6, 7 and 8 were on eviction of children, the elderly, denial of burial rights and denial of land usage. The responses were identical.

One respondent did not reply, another said no and five said yes.

Illegal farm evictions affect families which have children and the elderly, despite the fact that the respondents gave out different answers to the questions. The five respondents should not be construed as being influential in deciding to accept that families with children and the elderly are affected by illegal evictions. It is simply because people living and working on farms stay there with their families and, above everything else the case study discussed under 4.5.3 above is an example of that.

In **questions 9 – 17**, like in the questionnaires for people living and working on farms, the remaining set of the questions were asked as to how they agreed to certain statements. They had to strongly disagree, disagree, be neutral, agree or strongly agree.

Question 9

On the statement that landowners evicting people living and working on farms in the GKLM do not have the interests of the evictees at heart one did not give an answer; one strongly disagreed; one was neutral; three strongly agreed; and one noted that some are insensitive while others are not insensitive to the rights and interests of the evictees. Again, because the respondents are a diverse group with dissimilar objectives their attitudes were bound to be different. If they would be profiled, the three who strongly agreed, whenever and wherever an illegal farm eviction takes place are the ones that have to bear the brunt and try and have that situation speedily resolved. Therefore, they see the suffering of the victims of illegal farm evictions at its prime.

Question 10

The next statement was that Presiding Officers do not have an understanding of ESTA in terms of evictions in the GKLM. Two respondents strongly disagreed, one agreed, and four were neutral.

The two respondents who strongly disagreed come from the legal fraternity. This is their terrain and are involved in these issues on a daily basis. There is no reason to disbelieve or dispute what they said. Perhaps, they could be

protecting their integrity on a field belonging to them. The one that agreed did not see, most probably so, the courts as assisting or protecting evictees against illegal evictions. The four who preferred to be neutral perhaps saw themselves as not qualified to judge presiding officers in what they do or fail to do.

Question 11

On the one that people living and working on farms in the GKLM are not aware of their rights under ESTA one did not give an answer; one strongly disagreed; one disagreed; one agreed; and three strongly agreed.

Once more a variety of responses were received and they could be indicative that there is no certainty about the authenticity of the statement. Be that as it may, the fact that there are three responses that strongly agree with the statement suggests that there is a need to change the perception contained in the statement. An educational drive to people living and working on farms about their rights under ESTA has to be given priority by those championing their rights.

Question 12

The statement about farm owners being aware of their obligations under ESTA also received a variety of responses being no response: three agreeing, one strongly agreeing, one disagreeing and one strongly disagreeing. In this particular instance it could be perceived that the majority of people concur with the statement. There are a number of reasons for that. For instance, many farmers in the GKLM have an educational level that would make them aware of their rights. It is an open secret that their financial positions enable them to have access to legal practitioners who would educate them about their obligations under the ESTA.

Question 13 and 14

The worsening of illegal farm evictions in the GKLM after the advent of freedom in 1994 also came out with different views. Two did not provide answers; one strongly disagreed; one disagreed; and three agreed. The

degree at which the respondents agree or disagree is indicative of the perceptions about the phenomenon of illegal farm evictions in the GKLM. The fact of the matter is that illegal farm evictions do happen at the GKLM as revealed under 4.5 above. The most critical thing here is that a single illegal farm eviction is an eviction too many. The sentiments are also appropriate to the statement on illegal farm evictions subsiding after attaining freedom in 1994 (Question 14).

Question 15 and 16

These questions focus on whether the promulgation of ESTA has curbed the prevalence of eviction of people living and working on farms in the GKLM. Three respondents did not give answers; one was neutral; one agreed; one disagreed; and one strongly disagreed.

On question 16, namely that the promulgation of ESTA has not curbed the prevalence of eviction of people living and working on farms in the GKLM, two did not give answers; two strongly disagreed; two agreed and another strongly agreed.

Despite the responses that were received on the two statements on whether ESTA is curbing or not curbing illegal farm evictions in the GKLM (even without comparing any periods), statistics as indicated under 4.5 above reflect that illegal farm evictions in the GKLM are a common practice. Therefore, this reason alone would create the impression that to a certain extent, ESTA has not curbed illegal farm eviction in the GKLM.

Question 17

In their remarks the stakeholders made some suggestions which included workshops on ESTA for both farm owners and people living and working on farms; overhaul of ESTA; the Department of Land Affairs on its own being ineffective; change of ownership (or management) and change in land usage (from sheep farming to game farming) precipitate evictions; and wage determination leading to farm evictions. More or less these remarks corroborate what has already been elaborated on under 4.4 above.

Table 7 hereunder with abridged questions displays the manner of responses:

Table 7
Questions and responses from other stakeholders

Question	Response category								
	Y	No	N R	S D	D	N	A	S A	O R
1. Heeding of calls for the cessation of farm evictions in the GKLM?	1	3	3						
2. Prevalence of farm evictions in the GKLM?	4	1	2						
3. Victimisation major cause of farm evictions?	3	2	2						
4.Children among evictees?	5	1	1						
5. Knowledge of people denied burial rights?	5	1	1						
6. Knowledge of people denied land usage?	5	1	1						
7. Evictees families or individuals?	5	1	1						
8. Elderly among evictees?	5	1	1						
9.Evictors in GKLM not having interests of evictees at heart.			1	1		1		3	1
10.Presiding officers not having an understanding of the ESTA on eviction.				2		4	1		
11.Evictees not aware of their rights in terms of the ESTA.			1	1	1		1	3	
12. Farm owners aware of their obligations under the ESTA.			1	1	1		3	1	
13.Since 1994 evictions in the GKLM have worsened.			2	1	1		3		
14.Since 1994 evictions in the GKLM have subsided.			2	4	1				
15.ESTA has curbed prevalence of evictions in the GKLM.			3	1	1	1	1		
16.ESTA has not curbed prevalence of evictions in the GKLM.			2	2			2	1	

Key: Y = Yes; No = No; No Reply = NR; SD = Strongly Disagree; D = Disagree; N = Neutral; A = Agree; SA = Strongly Agree; OR= Other Response.

4.6 Conclusion

This chapter discussed farm evictions in the GKLM of the Eastern Cape. The preferred approach for the discussion was the case study method. The discussion began by looking at farm evictions under democracy in South Africa. It included ESTA and the reasons for evictions. To put the discussion into context, the demographics of the GKLM, the Qualitative Research Method, the Case Study Method, Case Studies for Communities and Human Rights under the South African Constitution and ESTA had to be explained.

The Haga-Haga Case Study was undertaken where constructive eviction was evident. The Case Study is indicative on how subtle and brutal constructive eviction can be. While constructive eviction may not necessarily have all the elements of other forms of eviction, but it does highlight the plight and suffering of people living and working on farms when their rights supposed to be protected by South Africa's constitution and ESTA are violated. It further confirms that illegal evictions of people living and working on farms in the GKLM is not a myth but a reality. It also means that there are those who do not prefer to disregard the spirit of ESTA.

Added to this part of the study is a discussion of responses to questionnaires received from a wide range of stakeholders including victims of evictions. Because the groups canvassed to respond to the questionnaires is diverse, their views have also tended to be diverse. In the same vein, people in the groups sharing the same experiences have tended to express the same view. An example that can be made here is about the three people living and working on farms who were affected by different forms of eviction, but more or less provided similar answers to the questionnaires. It must be highlighted here that while the three people may be deemed to be a very small number and perhaps unrepresentative, their suffering through illegal farm evictions, contains all the diverse ingredients that are reflective of the brutality of farm evictions.

CHAPTER FIVE

CONCLUSION

5.1 Introduction

The purpose of this chapter is to make an evaluation of this study thus far. The chapter summarises the findings of the study and provides tentative recommendations.

5.2 Evaluation

The evaluation of this study is based on the purpose of the study which was elaborated in Chapter 1. The study investigated illegal farm evictions in the Great Kei Local Municipality of the Eastern Cape. To fulfil this purpose, the case study method of the qualitative research paradigm was preferred. A Haga-Haga constructive eviction case was chosen. At the centre of the study were two specific research questions:

First, are the rights and obligations under ESTA clearly understood by farmers and evictees? Secondly, do our law enforcement agencies (including the courts) understand their roles in terms of administering ESTA?

In response to the first question by people living and working on farms the three interviewees strongly agreed that people living and working on farms were not aware of their rights under ESTA. It could also be argued that farmers could not be illegally evicting people living and working on farms if they understood that those who live and work on the farms have rights. Rather the farm owners take advantage of the fact that people living and working on farms do not understand their rights under ESTA. While the responses expressed by the three respondents were of a broader community of people living and working on farms, they also encompassed their personal experiences.

With regard to the farm owners, the responses of the three respondents concurred that farm owners clearly understand their rights and obligations under ESTA. This could be a perception. However, it could be a fair and a reasonable one as there is scarcity of people living and working on farms who violate the rights of farm owners. Even if farm owners did not understand their rights and obligations under ESTA, because of their economic status they have access to legal advice and that makes them steps ahead if they are to be compared with people living and working on farms. Therefore, they have an indisputable protection, which is accessibility to legal advice, that people living and working on farms do not have. Furthermore, it is an open secret that the majority of people living and working on farms are illiterate and those who have gone to school have left at elementary stages. Farm owners, on the other hand, are relatively well informed and educated.

On the second question our courts could perhaps protest on the view that they do not understand their roles in terms of administering and adjudicating the provisions of ESTA. Emphasis must be made here that this is not a sweeping statement against all magistrates. Some magistrates possess guidelines on ESTA in their offices. They have applied ESTA appropriately whenever a need arises. But, the reality is that our courts are not necessarily as perfect as they are supposed to be.

For instance, on 21 July 2006 the Magistrate's Court of East London issued a Warrant of Ejectment against people living and working on a farm at Cintsa in the Great Kei Local Municipality. It was not ESTA that was used to have them ejected from the farm. The area from which an Ejectment Warrant was used is a farm in the Great Kei Local Municipality. Ordinarily, it was expected that the case would be treated under ESTA at the Magistrate's Office in Komgha under which the area falls. It was reported that when this was raised with the magistrate concerned, he was unable to explain his actions.

Throughout the course of this research there has been no evidence indicating that the Land Claims Court (LCC) could be doubted on the understanding of its role in terms of administering ESTA. Rather, it has also participated in

drives that are aimed at guiding legal practitioners on the provisions of ESTA. For instance, it had its Judge President leading a workshop on training lawyers on the administration of ESTA from the 03 - 04 November 2005, in East London.

The Final Report (2003:90) indicates that the Eastern Cape Department of Land Affairs (ECDLA) held ESTA training workshops for the Eastern Cape South African Police Service (ECSAPS). But there is an admission from its side that the audience for the training was an incorrect one. This is because senior police officials turned out for the training and not officials at station level that interact with the legislation on a regular basis. Sometimes, it is alleged that information from the seniors does not cascade to the juniors in some institutions. Thus, it can be concluded that there is a very limited understanding of ESTA by our law enforcement agencies. That limited understanding compels an educational drive for the “bobby on the beat” around ESTA.

5.3 Findings

In Chapter 2 it was found out that both colonial and apartheid governments in South Africa were key role players in carrying out evictions of people living and working on farms. This was driven by the policies that those governments adopted and legislative mechanisms they implemented. Among others, the following legislative frameworks were used by those governments: the Glen Grey Act, the Natives Land Act, the Native Administration Act, the Native Trust and Land Act, and the Group Areas Act.

The only difference between the two was that the colonial powers were covert in their activities and the apartheid regime was open and rigorous in implementing all evictions.

Landowners were also instrumental in creating havoc by evicting people living and working on the farms throughout South Africa. Naturally, such activities saw farmers violating the rights of their evictees.

During the colonial and apartheid eras, the human rights factor from both the side of the governments and landowners was of little significance, if it existed at all. De-humanising and dispossessing African people through farm evictions was not taken as something seriously disgusting.

In Chapter 3 it is apparent that before 1994 the governments of both the colonial and apartheid eras never subscribed to the culture of human rights for blacks in South Africa. Rather, they played a lead role in violating the black people's rights. Those governments had constitutions which were very silent about the protection of human rights.

During the colonial and apartheid eras Parliament ruled supreme and was not "accountable" to the country's constitution. Instead the constitution could be amended at will like any other legislation. However, in the democratic dispensation, the country's constitution is the supreme law and is very difficult to amend, ignore or disregard in any dealings of the state. The state could also be described as one of the custodians of the country's constitution. The Constitutional Court, which did not exist during the colonial and the apartheid eras, is the main custodian of the constitution in South Africa. It has the authority to declare null and void any law or act, that does not comply with the spirit and purport of the constitution.

The democratic era arrived in South Africa with a number of institutions, which in a number of ways tried to remedy the violations of people's human rights during the colonial and apartheid times. These institutions include, among others: the Truth and Reconciliation Commission (TRC); the Commission for Restitution of Land Rights (CRLR); and the Land Claims Court (LCC). In the same spirit, the Constitutional Court, the South African Human Rights Commission (SAHRC) and the Land Claims Court concurrently shield in separate ways people against the violations of their rights.

The human rights culture in South Africa has a notorious history that is more on violating such rights than protecting them. Before democracy dawned, the state was the leader in such violations. The advent of the democratic dispensation therefore came as an emancipator as far human rights are concerned in South Africa.

While the researcher was gathering information for Chapter 4, the researcher observed that the Amathole District Land Delivery Office (ADLDO) does not have a unit that specialises on human rights issues. Human rights issues, including illegal farm evictions, form part of broader issues around land reform. In other words, human rights issues have to compete for attention with other issues. When a case is reported to all institutions like the ADLDO they cannot on their own order an unreasoning perpetrator of illegal farm evictions to stop his or her activities forthwith. They have to seek remedy on behalf of the victims of illegal farm evictions from the courts.

While undergoing internship at the ADLDO, the researcher found out that the offices of the Department of Land Affairs in the Eastern Cape have a forum called the ESTA Network, which focuses on illegal farm evictions. It meets monthly and rotationally at different locations of the District Level Delivery Offices (DLDOs). In the forum meetings, the DLDOs under the leadership of the Eastern Cape Provincial Land Reform Office, share their problems and successes. The offices advise each other on any challenges that are there. However, other stakeholders like the police, prosecutors and farmers do not take part in the network.

At the time of writing, that is November 2007, the activities of the ADLDO were of a reactive nature towards human rights abuse to its clients. People reported illegal farm evictions to the office when they occurred. There were no dedicated “foot soldiers” from the office prowling the countryside ready to pounce on anyone perpetrating such illegal farm evictions.

In the Case Study it was discovered that sometimes legal processes in solving issues take an exeggeratingly long time. For instance, the Haga-Haga case was reported at the ADLDO in June 2006, but by the 13 December 2007 information received indicated that the matter was set down for hearing by the LCC on the 21 January 2008. Meanwhile, the victims at Haga-Haga had to endure continued abuse of their rights by the farm owner.

The possibility of seeing people dying on the farm cannot be ruled out when taking into cognisance that the victims have among them vulnerable people like children and the elderly. If a death could happen, speculatively, it is expected that the case would be compounded by a further denial of burial rights to them.

While the victims in the Haga-Haga Case Study appear to be peace-loving people, the provocative behaviour of the farm owner could turn them violent. The victims could be begrudging the tractor driver that ploughed on top of their parent's graves and the people who removed the fences surrounding their homes. In other words, a possibility of revenge or the situation becoming violent cannot be ruled out. This is because growing frustration and anger emanating from abuses on the farm and the time it takes for a solution to their plight.

Above everything else the Haga-Haga Case Study portrays that constructive eviction violates human rights contained in ESTA and the South African Constitution. Secondly, it confirms that calls made during the 2001 Land Tenure Conference and the 2005 Land Summit for the cessation of illegal evictions have not been heeded.

5.4 Recommendations

In view of the nature of a constructive eviction it is recommended that mechanisms that could prevent perpetrators from carrying out their deeds be adopted. For instance, an institution like the ADLDO could be given legal powers to order such perpetrators to stop their activities. Perhaps this could be a temporal order pending its confirmation or rejection by a court of law.

It is recommended that all offices of the Department of Land Affairs that are at the forefront of protecting those facing illegal farm evictions have special units dedicated to such activities only. The fact that the officials dealing with the violation of human rights or ESTA also have to do other work is a disadvantage to the effectiveness of ESTA because the official's attention and time are divided among the various programmes of land reform.

It is recommended that a proactive approach be adopted in combating illegal farm evictions by those tasked to protect victims of illegal farm evictions. In that approach, officials of the unit recommended above could monitor illegal farm evictions in their designated areas.

The land rights awareness campaigns started in November 2007 by the Department of Land Affairs must be rigorously implemented and maintained at all costs.

Tangible collaborative and working relationships among government departments that are focussed on illegal farm evictions could be beneficial to all involved. Members of the network could include Labour, Justice and Constitutional Development, the South African Police Service (SAPS), Housing, Education and municipalities. Such relationships would be specifically intended to rescue people affected by illegal farm evictions. Through their organisations like the Landless People's Movement (LPM) and the Food and Allied Worker's Union (FAWU), people living and working on farms could be members of the ESTA Network too.

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APPENDIX A

P O Box 1958
EAST LONDON
5200
03 September 2007

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Dear Sir/Madam

re : HUMAN RIGHTS QUESTIONNAIRE

I am a student of human rights at the University of Fort Hare in Alice. I am currently doing a research study, which investigates illegal farm evictions in the Great Kei Local Municipality of the Eastern Cape.

Please assist me by completing the attached questionnaire for the purpose of the research. I must highlight that information provided for this study by you is confidential and will only be used for its intended purpose. Added to that is that your identity will only be the privilege of the researcher.

Your answers will contribute greatly to the study.
I will rely on you.
Yours faithfully

Kholekile T. Sonjica

APPENDIX B

Human Rights Questionnaire for beneficiaries

Section A: Biographical information

Please mark the appropriate block with an “X” on questions relevant to you!

Please indicate your age.

18-30 years	
31-40 years	
41-50 years	
51-55 years	
+56 years	

Gender

Male	
Female	

Race

Asian	
African	
Coloured	
White	

How long have you been working/living on this farm?

0-1 year	
2-5 years	
6-10 years	
11-20 years	
20 and above	

Section B - Evictions

1. In both the 2001 Tenure Conference in Durban and the 2005 Land Summit in Johannesburg calls were made for the cessation of farm evictions in South Africa. Would you say farm owners in the Great Kei Local Municipality heeded such calls?

Heeded	Never heeded

2. Dissemination of information to farm workers.

	YES	NO
Do you know your rights as a farm worker?		
Do you get information about your rights?		
Do you have a TV set?		
Do you have a radio?		
Are you aware of the resolutions taken at the 2001 Tenure Conference and the 2005 Land Summit?		

3. Prevalence of farm evictions of people living and working on farms in the Great Kei Local Municipality.

	YES	NO
Do you know of anybody evicted in this municipality		
Was the person/family related to you?		
How many evictions do you know of? (Tick the appropriate box): 0 – 5 families 6 – 10 families 11-15 families 16-20 families		

4. Victimization of people living and working on farms in the Great Kei Local Municipality

	YES	NO
Do you agree that the major cause of these farm evictions in is victimisation?		
Were they given notice to vacate the farm?		
Were they given their remuneration benefits?		
Did they have alternative accommodation?		

5. Eviction of children

	YES	NO
Do you know of a family/person with children that have been evicted?		
Tick the ages of children in the appropriate box: 0-5 years 6-10 years 11 – 15 years		

6. Do you know any people living and working on farms in the Great Kei Local Municipality who were denied burial rights?

Yes	No

7. Do you know any people living and working on farms in the Great Kei Local Municipality who were denied **land usage**?

Yes	No

8. Were the evictees that you know families or individuals?

Yes	No

9. Were there elderly people among the evictees?

Yes	No

How do you agree with each of the following questions (9 – 18)?

As an example you could agree as follows:

Strongly disagree (SD)

Disagree (D)

Neutral (N)

Agree (A)

Strongly agree (SA)

	SD	D	N	A	SA
10. Landowners evicting people living and working on farms in the Great Kei Local Municipality do not have the interests of their evictees at heart.					
11. Presiding officers do not have an understanding of the Extension of Security of Tenure Act, 62 of 1997 (ESTA) in terms of evictions in the Great Kei Local Municipality.					
12. People living and working on farms in the Great Kei Local Municipality are not aware of their rights under the Extension of Security of Tenure Act, 62 of 1997 (ESTA).					
13. Farm owners in the Great Kei Local Municipality are aware of their obligations under the Extension of Security of Tenure Act, 62 of 1997 (ESTA).					
14. Since the advent of freedom in 1994 eviction of people living and working on farms in the Great Kei Local Municipality has worsened					
15. Since the advent of freedom in 1994 eviction of people living and working on farms in the Great Kei Local Municipality					

has subsided					
16. The promulgation of the ESTA has curbed the prevalence of the eviction of people living and working on farms in the Great Kei Local Municipality					
17. The promulgation of the ESTA has not curbed the prevalence of the eviction of people living and working on farms in the Great Kei Local Municipality					

18.

Other

remarks

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APPENDIX C

Human Rights Questionnaire

Please mark the appropriate block with an "X" on questions relevant to you!

2. In both the 2001 Tenure Conference in Durban and the 2005 Land Summit in Johannesburg calls were made for the cessation of farm evictions in South Africa. Would you say farm owners in the Great Kei Local Municipality heeded such calls?

Heed- ed	Never heeded

3. Are evictions of people living and working on farms in the Great Kei Local Municipality prevalent?

YES	NO

4. Would you agree that the major cause of those evictions is victimisation?

YES	NO

5. Were there children among the evictees that you know of?

YES	NO

6. Do you know any people living and working on farms in the Great Kei Local Municipality who were denied burial rights?

YES	NO

7. Do you know any people living and working on farms in the Great Kei Local Municipality who were denied land usage?

YES	NO

8. Were the evictees that you know families or individuals?

YES	NO

9. Were there elderly people among the evictees?

YES	NO

How do you agree with each of the following statements (9 – 18)?

As an example you could agree as follows:

Strongly disagree (SD)

Disagree (D)

Neutral (N)

Agree (A)

Strongly agree (SA)

	SD	D	N	A	SA
10. Landowners evicting people living and working on farms in the Great Kei Local Municipality do not have the interests of the evictees at heart.					
10. Presiding officers do not have an understanding of the Extension of Security of Tenure Act, 62 of 1997 (ESTA) in terms of evictions in the Great Kei Local Municipality.					
11. People living and working on farms in the Great Kei Local Municipality are not aware of their rights under the Extension of Security of Tenure Act, 62 of 1997 (ESTA).					
12. Farm owners in the Great Kei Local					

Municipality are aware of their obligations under the Extension of Security of Tenure Act, 62 of 1997 (ESTA).					
13. Since the advent of freedom in 1994 eviction of people living and working on farms in the Great Kei Local Municipality has worsened.					
14. Since the advent of freedom in 1994 eviction of people living and working on farms in the Great Kei Local Municipality has subsided.					
15. The promulgation of the ESTA has curbed the prevalence of eviction of people living and working on farms in the Great Kei Local Municipality.					
16. The promulgation of the ESTA has not curbed the prevalence of eviction of people living and working on farms in the Great Kei Local Municipality.					

17. Other remarks

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